



Transcript of **Allan J. Lichtman**

Date: April 20, 2016

Case: One Wisconsin Institute, Inc., et al. -v- Nichol, et al.

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE WESTERN DISTRICT OF WISCONSIN 3 ----- x 4 ONE WISCONSIN INSTITUTE, : 5 INC., et al., : 6 Plaintiffs, : 7 v. : Case No. 15-CV-324 8 GERALD C. NICHOL, et al., : 9 Defendants. : 10 ----- X</p> <p>12 Deposition of ALLAN J. LICHTMAN 13 Washington, DC 14 Wednesday, April 20, 2016 15 9:15 a.m.</p> <p>23 Job No.: 108795 24 Pages 1 - 193 25 Reported by: Debra A. Whitehead</p>	<p>1 A P P E A R A N C E S 2 ON BEHALF OF PLAINTIFFS: 3 BRUCE V. SPIVA, ESQUIRE 4 PERKINS COIE, LLP 5 700 13th Street, Northwest 6 Suite 600 7 Washington DC 20005-3960 8 (202) 654-6200 9 10 ON BEHALF OF DEFENDANTS: 11 CLAYTON P. KAWSKI, ESQUIRE 12 Assistant Attorney General 13 Wisconsin Department of Justice 14 Post Office Box 7857 15 Madison, Wisconsin 53707 16 (608) 266-7477 17 18 19 20 21 22 23 24 25</p> <p>1 C O N T E N T S 2 EXAMINATION OF ALLAN J. LICHTMAN PAGE 3 By Mr. Kawski 5 4 5 E X H I B I T S 6 (Attached to the Transcript) 7 LICHTMAN DEPOSITION EXHIBIT PAGE 8 Exhibit 1 Expert Report: Intentional 49 9 Discrimination, Allan J. Lichtman, 10 12/10/15 11 Exhibit 2 Crawford v Marion County Election 121 12 Board, 563 U.S. 181 (2008) 13 Exhibit 3 Article, "Effects of 135 14 Identification Requirements on 15 Voting: Evidence from the 16 Experiences of Voters on Election 17 Day," by Ansolabehere 18 Exhibit 4 goMilwaukee Website Printout 168 19 Exhibit 5 Rebuttal Expert Report, Allan J. 171 20 Lichtman, 2/16/16 21 Exhibit 6 Marquette University Law School 179 22 Poll - October 23-26, 2014, 23 Results for Likely Voters 24 Exhibit 7 Pew Research Center, Broad Support 179 25 For Photo ID Voting Requirements</p>
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<p>1 P R O C E E D I N G S 2 ALLAN J. LICHTMAN, 3 having been duly sworn, testified as follows: 4 EXAMINATION BY COUNSEL FOR DEFENDANTS 5 BY MR. KAWSKI: 6 Q Good morning, Dr. Lichtman. 7 A Good morning. 8 Q My name is Clay Kawski. I am an Assistant 9 Attorney General at the Wisconsin Department of 10 Justice, and we're here today for your deposition. 11 This is in the case One Wisconsin 12 Institute, Inc., versus Gerald C. Nichol; Case 13 Number 15-CV-324; United States District Court for 14 the Western District of Wisconsin. 15 Before I get started, I always go through 16 the deposition basics. But I know you've been 17 deposed a number of times. Correct? 18 A Correct. 19 Q So you understand you have to give verbal 20 responses. Correct? 21 A Correct. 22 Q And that's for the court reporter to be 23 able to take down your testimony. 24 A Correct. 25 Q How many times have you been deposed?</p>	<p>5</p> <p>1 fair to me to assume that you understood it? 2 A Yes. If I don't understand it, I'll let 3 you know. 4 Q Right. And if you need a break at any 5 time today, just ask for it, but please don't do so 6 until you've answered the question. 7 A I do appreciate that. 8 Q What did you do to prepare for today's 9 deposition? 10 A I reviewed my reports, spoke with 11 attorneys. And I keep getting inundated with some 12 new information. Apparently the state has been 13 regularly submitting new information, some of which 14 I have seen, some of which I have not seen yet -- 15 Q Okay. 16 A -- and -- or not had a chance to digest 17 yet. 18 Q Okay. And you say "new information." 19 What type of new information? 20 A The information, as I understand it -- and 21 I haven't seen all of it -- is information about the 22 petition process for getting IDs. That's most of 23 what I've seen. Plus depositions of some state 24 officials have been taken very recently. I have not 25 yet had a chance to review them, but I certainly</p>
<p>6</p> <p>1 A I can't even count. Dozens, probably. 2 Q Okay. When is the most recent? 3 A Probably in the Virginia voter ID case, 4 maybe a month or two ago. 5 Q Okay. And have you testified at trial in 6 that case yet? 7 A Yes. 8 Q When was that? 9 A Just recently. You know, maybe a few 10 weeks ago. 11 Q Okay. So as we go through the 12 deposition -- we're doing a good job -- we need to 13 avoid speaking over each other. So if I ask a 14 question, let me finish. And then when you give 15 your answer, I'll let you finish. And that will 16 allow Mr. Spiva to object. 17 Do you understand all that? 18 A Yes. 19 Q And is there any reason that you cannot 20 testify truthfully today, such as you're on alcohol 21 or some kind of medication that -- 22 A I'm not on anything. 23 Q Okay. 24 A Just my heart medicine. 25 Q Okay. If you answer my question, is it</p>	<p>7</p> <p>1 intend to review them before trial. 2 I also understand some depositions have 3 been taken of defendants' experts very recently, 4 which I also would intend to review but have not had 5 a chance to review as yet. 6 There -- I did see some information about 7 public outreach and education, some budget figures 8 that recently came in. I quickly glanced at the 9 district court opinion that came down about a week 10 or so ago. 11 And I also saw in press reports and in 12 television clips comments by Congressman Grothman, 13 former Senator Grothman, as well as one of the aides 14 to, I believe it was a senator who was involved in 15 the initial process of adopting voter photo ID. 16 And those -- that material, which also 17 just appeared in the press recently, was something I 18 have taken cognizance of, as well. 19 Q Have you read any recent press about the 20 April 5th, 2016, election in Wisconsin? 21 A I have. 22 Q What have you read? 23 A Just articles. I can't tell you the 24 particular journals. But there were a bunch of them 25 from Wisconsin that I did read.</p>

<p>1 Q Did you read about the turnout for that 2 election? 3 A Yes. 4 Q And what did you learn about it? 5 A That it was a very high turnout for that 6 election, even higher than the recent previous 7 records in Wisconsin. 8 Q We'll talk more about that as we get into 9 the specifics here. 10 You said you read your reports in 11 preparation for today. Do you mean reports other 12 than those that were filed in this case? 13 A No. 14 Q Just the reports in this case? 15 A Yes. 16 Q Okay. And since you prepared your 17 February 16th report, have you formed any new 18 opinions that you're going to be offering in this 19 case? 20 A Very possibly. Because so much new 21 information has come down since that report. I'm 22 not sure they're new opinions, but they're 23 strengthened and reinforced opinions. 24 Q Okay. Have you begun to prepare any 25 supplemental report?</p>	<p>9</p> <p>1 Because, again, that's very recent material that I 2 just got. And as I said, there's a lot of new 3 material I have not absorbed, digested or analyzed 4 it yet. 5 Q Have you spoken to Professors Burden or 6 Mayor? 7 A About this case, or about anything? 8 Q About this case. 9 A Not that I can recall. 10 Q But you have spoken to them? 11 A I don't know if I've ever spoken to 12 Professor Mayor. I may have in passing spoken to 13 Professor Burden because we've been involved in some 14 similar cases. 15 But if I spoke to him, it was truly in 16 passing -- 17 Q Okay. 18 A -- and nothing substantive. 19 Q Okay. What cases do you recall that 20 you've been both involved in? 21 A I think North Carolina was one of the 22 cases in which we were both involved. 23 Q Ohio? 24 A I was not involved in Ohio. 25 Q Okay. Did you take any notes in</p>
<p>10</p> <p>1 A I have not. 2 Q And no one has asked you to do that yet? 3 A Not yet. You never know what lawyers 4 might ask you, but ... 5 Q And you said you spoke to some attorneys. 6 Have you spoken to anyone else in preparation for 7 today's deposition? 8 A No. 9 Q Spoken to your wife? 10 A I always speak to my wife, but not about 11 the substance of this deposition. 12 Q Okay. 13 A I'm sure she would be singularly 14 uninterested, but you never know. 15 Q Have you spoken to any colleagues about 16 the case? 17 A No. 18 Q Spoken to any friends about the case? 19 A Only to the extent that I might have 20 mentioned I'm involved in a Wisconsin case, but not 21 beyond that, no. 22 Q Okay. Did you review any other documents, 23 aside from what you've already mentioned? 24 A I took a quick glance at the deposition of 25 Professors Burden and Mayor but really quick.</p>	<p>12</p> <p>1 preparation for today's deposition? 2 A No. 3 Q Okay. Do you know when the trial date is 4 in this case? 5 A I believe it's May 16. 6 Q And I think it's May 16, that week, and 7 then the week of the 23rd. Correct? 8 A That's my understanding. I'm not the 9 lawyer here. 10 Q Sure. Are you available to testify during 11 those two weeks? 12 A Yes. 13 Q Okay. Are there any days that you're not 14 available to testify that you can think of right 15 now? 16 A Not that I know of at the moment. I told 17 the attorneys I was broadly available. 18 Q Okay. There's a lot of material attached 19 to your expert -- first expert report, you know, 20 your CV and all the cases. So I don't want to get 21 into that any great detail. But just tell me about 22 your educational background. 23 A Sure. I received my -- I hate to say it, 24 my B.A. from Brandeis way back in 1967. I was 25 actually a science major until my senior year, when</p>

1 I switched to history. Science major explains my 2 interest in quantitative methodology and procedures. 3 I then received my Ph.D. from Harvard 4 University in 1973, with a specialty in American 5 political history and quantitative methodologies. 6 Q What was the subject of your dissertation? 7 A Presidential election of 1928, which 8 became one of my first books published by University 9 of North Carolina Press back in the late 1970s. 10 Q Okay. And so after you completed your 11 Ph.D., what was your next endeavor? 12 A The next endeavor was to assume a position 13 at American University, and I've been a professor 14 there since 1973, moving up in the ranks from 15 assistant -- I went directly to full professor. I 16 got early tenure and full professor. And about five 17 years ago I was appointed a distinguished professor. 18 Q Is that, like, emeritus status? 19 A No. 20 Q No? 21 A Quite the opposite. A distinguished 22 professor is a very special rank reserved for 23 professors of special accomplishment. 24 There are only, as far as I know, three or 25 four of us out of 800-some-odd faculty full time at	13 1 Q And you're still working there full time 2 teaching, as well? 3 A Yes. Although as a distinguished 4 professor I have a -- we do a teaching load. But I 5 am a regular, full-time faculty member. 6 Q Are you teaching this semester? 7 A I am. 8 Q What are you teaching? 9 A I'm teaching a course in American 10 politics. 11 Q Okay. 12 A History of American politics. 13 Q For undergraduate or graduate students? 14 A It includes both undergraduate and 15 graduate students. 16 Q Okay. Have you taught courses that 17 include statistical analysis of political matters? 18 A Yes. 19 Q What courses? 20 A Actually, while I was in graduate school 21 at Harvard, I taught a course in statistical 22 methodologies at Brandeis University. And I've 23 taught courses in statistical methodology at 24 American University, although not recently. 25 Q Okay. What is the most recent statistical
14 1 the American University. It's a university 2 designation. It is not a departmental designation. 3 Q Okay. Why did you select American 4 University, or did they select you? I just want to 5 know how you -- 6 A We're talking about 1973. 7 Washington, DC. 8 Q Okay. 9 A You know, I'm a political historian. What 10 better place to be? And have you ever been to 11 American University? 12 Q No. 13 A It's a -- it's a beautiful campus, 14 wonderful place. Great place to be. 15 Q Okay. And have you done any -- visited 16 other universities? 17 A I was a visiting distinguished professor 18 at the California Institute of Technology in, gosh, 19 1980, '81. 20 Q Okay. But otherwise you've been at 21 American? 22 A Correct. 23 Q Okay. 24 A My only regular appointment for the last 25 43 years has been American University.	14 1 course you've taught? 2 A Oh, it's a long time ago at American 3 University. I don't remember exactly. 4 And the reason I haven't taught it 5 recently, quite frankly, is there's not that much 6 interest among historians in quantitative 7 methodologies. Most of those who go into history 8 have more of a humanities than a social science 9 approach. 10 Q So who are the giants of quantitative 11 methodologies in history? 12 A Oh, I would say, you know, probably the 13 greatest giant is Robert Fogel, winner -- he's an 14 economic historian, the winner of Nobel Prize in 15 economics. You can't get more of an accolade than 16 that. 17 J. Morgan Kousser, at the California 18 Institute of Technology is another pioneer. Maris 19 Vinovskis, who was at Harvard when I was at Harvard, 20 would be another pioneer in that area. Richard 21 Jensen, Paul Kleppner are others who -- you know, of 22 my generation who have worked on that. 23 Q Okay. I guess just tell me about your 24 discipline. You say that you -- you know, you're an 25 expert in history and quantitative analysis of

1 history. 2 What does that mean? 3 A Before I answer your question, let me say 4 my expertise is not limited to that. 5 Q Okay. 6 A Those are two of my areas of expertise. 7 Q Sure. I'll try and get into what areas of 8 expertise are relevant to this case and which are 9 not later. 10 A Sure. 11 Q But tell me about generally that field. 12 A Yeah. As I approach it, my work in 13 quantitative history combines traditional historical 14 methods and mathematical analysis. That is, I 15 research manuscript sources. I go to primary 16 sources. Letters, diaries, legislative histories, 17 things of that nature. As well as doing 18 quantitative analysis. 19 So for my dissertation and my first 20 book -- the book was Prejudice and the Old Politics: 21 The Presidential Election of 1928 -- I looked at 22 paper collections. I did a lot of primary source 23 research. And I also did an extensive quantitative 24 analysis of voting patterns in the election of 1928 25 and also compared those voting patterns with other	17 1 movement and my study of F.D.R. and the Jews, both 2 of which have won major national awards. 3 Q You mentioned the 13 keys, the book and 4 the concept. 5 A Right. 6 Q Where does -- does election procedure or 7 mechanics play any part in the 13 keys? 8 A Not directly. Of course indirectly, 9 absolutely. 10 Q Okay. How indirectly? 11 A Indirectly it sets up the system that 12 is -- you know, we have a regular system of 13 presidential elections. We have known procedures 14 for presidential elections, many of which go back to 15 the original constitution and the 12th amendment to 16 the constitution of course. 17 We have a relatively stable two-party 18 system in the United States. We have a 19 presidential, not a parliamentary system. We have a 20 winner-take-all system. 21 So all of those systematic elements of 22 American presidential elections inform and provide 23 the context for the keys to the White House. 24 However, the keys themselves do not directly refer 25 to election procedure or administration. Rather,
18 1 early 20th century voting patterns. 2 That was also expressed in an article I 3 published back in the 1970s, as well, in the 4 American Historical Review, the leading journal in 5 the field. 6 And I have also published a methodological 7 works on quantitative analysis in history, in such 8 journals as Evaluation Review, Journal of 9 Inter-Disciplinary History, Social Science History. 10 I also incorporated mathematical and 11 traditional historical methodologies in my series of 12 books on the keys to the White House, which is a 13 system for explaining and predicting American 14 presidential elections. 15 I have also published highly technical 16 articles on that topic in journals such as the 17 Journal of the National Academy of Sciences, one of 18 the three leading scientific journals in the world; 19 as well as the International Journal of Forecasting 20 and other scholarly articles -- other scholarly 21 journals. 22 Similarly, a combination of quantitative 23 and traditional historical methodologies have 24 informed some of my more recent works, such as my 25 study of the rise of the American conservative	18 1 the keys themselves are primarily referential to 2 presidential performance by the party holding the 3 White House and the strength and unity of the party 4 holding the White House. 5 The basic conceptual, as opposed to the 6 mathematical theory behind them is that elections 7 for president are primarily viewed as referenda on 8 the performance of the party holding the White 9 House. And the 13 keys are a way of modeling the 10 voter's view of presidential performance and coming 11 up with a decision rule that enables you to make 12 predictions. 13 Q For example, a voter photo identification 14 requirement, which of the 13 keys would that fit 15 into, if any? 16 A Probably none of them directly. 17 One of the nice things about the keys is, 18 they've held over a very long period of American 19 electoral history. Retrospectively back to Lincoln 20 and Douglas in 1960, and prospectively, for actual 21 realtime forecasts prior to the presidential 22 election from 1984 to 2012. So they've held 23 robustly through an enormous variety of changes in 24 our society, our economy, our demography, our 25 technologies, as well as our election procedures.

1 Q Is it fair to say that election procedures 2 would not impact the outcome under the 13 keys? 3 A It depends what they are. Obviously the 4 keys are based upon precedent. And any sharp break 5 in precedent could have an effect on anything 6 involved in presidential elections. 7 Q What about a voter photo identification 8 requirement? 9 A As I said, the keys are robust through 10 huge changes in election procedures. And there was 11 nothing directly referential to voter identification 12 of any kind. 13 Q Okay. Have you been involved in politics? 14 A Yes. 15 Q What has been your involvement? 16 A I've kind of been -- not for a very long 17 time, not for decades, I've consulted with 18 politicians and political staffers and consultants. 19 I've consulted with -- gosh, it's a shame to say, 20 some of those I've consulted with have passed away. 21 But George McGovern, Ted Kennedy. And not 22 directly with Ronald Reagan. But quite directly, 23 probably my most extensive consultant with a 24 staffer, who has also passed away, was Lee Atwater, 25 the political director of the Ronald Reagan White	21 1 Congress. You know, they have approval ratings 2 lower than Atilla the Hun, yet you continue to be 3 electing the same kind of people. 4 And I made the argument, While, you know, 5 I've never held office, never been a politician, my 6 experience as an educator, my experience in voting 7 rights, more than qualified me for United States 8 Senate. And I would be a different kind of senator. 9 I was kind of modeling myself on the late 10 Paul Wellstone, kind of the last -- as far as I 11 know, the last educator, full-time educator to be 12 elected to the United States. 13 You know, I really got nowhere in the 14 campaign. I didn't have enough money. I was shut 15 out by the party because I was running against the 16 grain of the party. I was even shut out of the one 17 televised senatorial debate. 18 Q Do you have any intention to run for 19 office again? 20 A Absolutely not. Not been involved in 21 politics for ten years. I'm 69 years old. I have 22 utterly no intention of becoming involved in 23 politics again. 24 Q The message that you were putting forth in 25 2006, is it not similar to the message that some of
1 House. 2 So you can see my experience is pretty 3 ancient. I haven't consulted politically really in 4 recent years. But I did run for office. I ran as a 5 maverick against the grain of the Democratic party 6 in the 2006 Democratic primary for U.S. Senate, 7 where I was spectacularly unsuccessful. I think I'm 8 a much better professor than I am a political 9 candidate. 10 And I have not been involved in politics 11 over the last ten years, except as a commentator and 12 as an analyst. But I've not done consulting, I've 13 not run for anything. 14 Q What spurred you to run in 2006? 15 A I felt that we were getting too much of 16 the same kind of politician. Kind of your 17 professional politician who looked at office serving 18 as a career and was not really responding to what I 19 thought were some of the urgent needs of the 20 country. 21 So I was making the argument, as I said as 22 a maverick, running against the grain of the party. 23 And I since have been very critical of the 24 Democratic party. And this is all in Maryland. I'm 25 making the argument to the voters, You hate the	22 1 the major political candidates in the presidential 2 race today are putting forth? 3 A It is similar to what you hear from some 4 of the presidential candidates. Maybe I was ten 5 years too early, you never know. 6 Q And you said that you did some political 7 consulting. Was that paid work? 8 A I did some paid work and some unpaid work. 9 My main paid work was not directly political 10 consulting, but I was -- the consulting historian 11 for George McGovern's production of his memoirs. I 12 was not paid by Mr. Atwater. 13 And, by the way, I am mentioned in Lee 14 Atwater's biography. Bad Boy talks about his work 15 with me on the keys to the White House. 16 Q Okay. Have you ever worked as a poll 17 worker as an election precinct? 18 A I was a precinct official I think a long 19 time ago, you know, more than maybe 20 -- maybe some 20 20 years ago. But I have not worked as a precinct 21 official per se. 22 Q So when I say that, I mean someone who was 23 helping people get their ballot. Have you ever done 24 that? 25 A That is how I understood your question.

<p style="text-align: right;">25</p> <p>1 And I don't recall having done that.</p> <p>2 Q Okay. Have you ever been to Wisconsin?</p> <p>3 A Yes.</p> <p>4 Q How many times?</p> <p>5 A Oh, maybe once or twice, and not recently.</p> <p>6 Q Have you ever voted in Wisconsin?</p> <p>7 A No.</p> <p>8 Q Never lived there?</p> <p>9 A No.</p> <p>10 Q How does one vote at a polling place in Wisconsin?</p> <p>11 A I'm not sure I understand your question.</p> <p>12 Q What are the steps a voter needs to take to get a ballot in a polling place in Wisconsin?</p> <p>13 A Well, my understanding is to get a ballot in a polling place in Wisconsin you have to present yourself to the election officials, you have to present an -- one of a list of acceptable photo identification that has to be verified by the election official.</p> <p>14 If you don't have photo identification or your photo identification is not deemed to be acceptable, for example as I understand it a student ID that doesn't have an expiration date, then you are supposed to be offered a provisional ballot.</p>	<p style="text-align: right;">27</p> <p>1 precinct -- because, you know, there are laws -- if this is what you're asking me, I am familiar. There are laws about what precinct you have to vote in.</p> <p>2 So, you know, there are a number of other things that you have to satisfy in order to get a regular ballot.</p> <p>3 Q Do you have to state your name?</p> <p>4 A I'm not sure if you state your name or present your name on a photo ID. I'm not sure whether you have to verbally do it or do it with documentation. I would imagine whether you state it or not, you have to do it with documentation.</p> <p>5 Q Do you have to state your current address?</p> <p>6 A I'm not certain whether you have to state your current address or not.</p> <p>7 Q Does the address on your ID card have to be current?</p> <p>8 A I believe the address on your ID card, if the ID card is unexpired, and I think you've got a year's waiting time, does not have to be the current address.</p> <p>9 Q Are there any other requirements that you must do before obtaining a ballot as a voter on election day in Wisconsin?</p> <p>10 A Beyond the four or five I've already mentioned, I'm not aware of others.</p>
<p style="text-align: right;">26</p> <p>1 And a provisional ballot is a ballot, as I understand it in Wisconsin, that may or may not be counted. That you've got to come back, as I understand it, by 8 o'clock that evening to the polling place or to a state office by the Friday after the election.</p> <p>2 And if you don't do that, my understanding is that your provisional ballot will not be counted. If, however, you have an ID that is deemed acceptable by the election official, you can then go on to cast a regular ballot that doesn't require any additional action on your part as a voter.</p> <p>3 Q In addition to showing the ID, are there any other steps a voter must take before obtaining a ballot on election day?</p> <p>4 A I'm not certain of other steps.</p> <p>5 Q So you have not looked at what Wisconsin law requires to obtain a ballot as a voter?</p> <p>6 A I've looked at the voter ID requirements, but I'm not aware of other requirements that you would have to go through to get a ballot in Wisconsin.</p> <p>7 My understanding is, if you present yourself at the polling place, you're on the poll book as a registered voter, you're at the right</p>	<p style="text-align: right;">28</p> <p>1 mentioned, I'm not aware of others.</p> <p>2 Q Do you have to sign anything as a voter to get a ballot?</p> <p>3 A I'm not aware that you have to sign anything.</p> <p>4 Q Do you have to show any other document?</p> <p>5 A I'm not sure what you mean by other documents.</p> <p>6 Q Other than a qualifying photo ID?</p> <p>7 A I don't believe you have to show other documents.</p> <p>8 Q Are you familiar with the requirements of how to register to vote in Wisconsin?</p> <p>9 A Generally. But, you know, I know you can register in person. You can register at DMV and welfare offices. You can register online. You can register by mail. So --</p> <p>10 Q You can register online?</p> <p>11 A I believe you can.</p> <p>12 Q Okay. Are you -- let me ask you this: How does one obtain an absentee ballot in Wisconsin?</p> <p>13 A I'm not sure of the exact mechanisms. But normally to obtain an absentee ballot you would send in a mail request for the absentee ballot. And in Wisconsin my understanding is you also have to</p>

<p>1 submit a qualifying photo ID to get an absentee 2 ballot.</p> <p>3 Q Have you voted recently in Maryland?</p> <p>4 A Yes.</p> <p>5 Q Did you vote in person?</p> <p>6 A Yes.</p> <p>7 Q On election day?</p> <p>8 A I voted both on election day and early 9 voting.</p> <p>10 Q When is the last time you voted?</p> <p>11 A The last election.</p> <p>12 Q When was that?</p> <p>13 A 2014, I believe.</p> <p>14 Q There hasn't been a presidential primary 15 recently?</p> <p>16 A No. It's next week.</p> <p>17 Q Okay. You haven't voted early for that 18 presidential primary?</p> <p>19 A No.</p> <p>20 Q Do you intend to vote on election day?</p> <p>21 A No.</p> <p>22 Q You intend to vote early?</p> <p>23 A I intent to vote absentee.</p> <p>24 Q And how would you do absentee in Maryland?</p> <p>25 A I did it online.</p>	<p>1 Q Why did you vote absentee -- or why do you 2 intend to vote absentee from home?</p> <p>3 A I'm going to be out of the state.</p> <p>4 Q So that's more convenient for you?</p> <p>5 A Well, I'm not going to be here for 6 election day.</p> <p>7 Q It's more convenient for you?</p> <p>8 A No. It's necessary.</p> <p>9 Q Okay.</p> <p>10 A Since I'm not here in the state, I either 11 have to vote early or I have to vote absentee ipso 12 facto.</p> <p>13 Q Have you ever voted absentee by mail?</p> <p>14 A No.</p> <p>15 Q Why not?</p> <p>16 A Because I have previously been in the 17 state on election day.</p> <p>18 Q Do you think that voting absentee via mail 19 is a convenient method for voters?</p> <p>20 A It certainly can be, absolutely.</p> <p>21 Q Why would it be convenient?</p> <p>22 A Because if you're not in the state, that's 23 a way of making your vote count.</p> <p>24 Q What if you don't have time to vote on 25 election day; would that also make it convenient?</p>
<p>1 Q Okay. So --</p> <p>2 A You could do it by mail as well.</p> <p>3 Q Okay. So in Wisconsin can you vote 4 absentee by mail?</p> <p>5 A Yes.</p> <p>6 Q And how would one obtain an absentee 7 ballot by mail in Wisconsin?</p> <p>8 A I believe you would have to apply for an 9 absentee ballot. You can send in a mail request. 10 I'm not -- I have to tell you, I'm not an 11 expert on every jot and tittle of every regulation 12 on this in Wisconsin.</p> <p>13 Q Okay. Wouldn't it seem important to be an 14 expert on every jot and tittle to give an expert 15 opinion in this case?</p> <p>16 A No.</p> <p>17 Q No? Why not?</p> <p>18 A Because my expert opinion is based upon 19 not knowing every single detail of election 20 administration in Wisconsin, but more than 21 sufficient detail to give opinions about the effects 22 of such things as a voter identification laws, 23 restriction of early voting and the other matters on 24 which I opine. And I provided extensive 25 documentation of my opinions.</p>	<p>1 A Sure.</p> <p>2 Q What if you're working on election day, 3 would that also make it convenient?</p> <p>4 A Clearly.</p> <p>5 Q In Wisconsin, under what circumstances can 6 a voter obtain an absentee ballot by mail?</p> <p>7 A I'm not sure I understand your question.</p> <p>8 Q Do they have to have any excuse to --</p> <p>9 A I don't believe so, no.</p> <p>10 Q Is Wisconsin a no excuse absentee voting 11 state?</p> <p>12 A I believe that's right.</p> <p>13 Q Okay. So in Wisconsin a voter can avoid 14 the lines that might exist for absentee voting in 15 person by requesting an absentee ballot by mail. 16 Correct?</p> <p>17 A That's correct.</p> <p>18 Q So they can vote from home and avoid the 19 lines at the polling place. Correct?</p> <p>20 A If they go -- but they also have to go 21 through a process to get the absentee ballot. It's 22 not as if, Oh, I'm not going to spend any time on 23 this. I have to figure out the absentee ballot 24 process. I've got to get an absentee ballot. I've 25 got to fill out the absentee ballot. I've got to</p>

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1	send in the absentee ballot by mail. And I've got 2 to make sure I have the right kind of photo ID, 3 because Wisconsin is one of the very few states that 4 requires a photo ID with an absentee ballot. 5 So kind of the premise of your question is 6 not exactly correct. It's not as if you're 7 necessarily avoiding time and energy. You may be 8 spending more time and energy going through the 9 absentee ballot process than simply showing up at 10 the polling place and voting, even when there are 11 long hours. And that would be particularly true for 12 those of less education, those who might have 13 difficulty with the English language, those of lower 14 socio-economic status generally.	1	someone who does not have the ID? 2 A Both. 3 Q Okay. And explain why. 4 A First, what we do know is, there's a lot 5 of voter confusion about IDs. You know, most voters 6 cannot name their congressman. And you cannot 7 expect the average voter to necessarily know all the 8 in's and out's of a voter photo ID process, 9 particularly one as complex at the Wisconsin voter 10 ID requirement. Where, for example, you can't just 11 use your regular college student ID. Student IDs 12 have to fulfill a set of very specific requirements 13 that are not typical of other states. You can't use 14 your government employee ID, for example. 15 So even those who might have IDs are going 16 to be confused. And then not necessarily going to 17 know whether the ID they have is legitimate for 18 voting. 19 I cite a study, for example, of Texas in 20 my report, which indicates very large numbers of 21 individuals, in a very competitive congressional 22 district, 23 in Texas, did not vote. Not because 23 they didn't have IDs, but because they were 24 confused. They weren't certain whether the ID they 25 have really was a legitimate ID.
1	get it all at once. But if you're saying you can, 2 that is certainly possible. 3 Q And we're going to talk about your expert 4 reports. 5 A Sure. 6 Q You don't mention the mail-in absentee 7 option at all in your reports; do you? 8 A I do. 9 Q You do? 10 A I do. 11 Q Okay. And what do you mention about it? 12 A I talk about several things about it. I 13 mean, we're talking by memory now, because I don't 14 have the report in front of me. 15 Q Yes. 16 A But I talk about the fact that I believe 17 Wisconsin was the first state to require photo ID 18 for absentee mail in ballots, with certain limited 19 exceptions. And that makes the absentee ballot 20 process yet more onerous for the kinds of people I'm 21 talking about in my report, particularly minorities 22 and those of lower socio-economic standing, which is 23 also highly correlated with minority status. 24 Q Now, are you saying that it's harder for 25 someone who already has the ID or it's harder for	1	So even those who have IDs, there is going 2 to be real issues when it comes to whether it be 3 absentee ballot or whether it be ballots at the 4 polls. And because Wisconsin imposes this extra 5 requirement of a photo ID for absentee ballots, that 6 poses a particular barrier for minorities. 7 And that study in Texas showed that those 8 who didn't vote because they didn't think they had 9 acceptable IDs were heavily minority. 10 Q Did you write that Texas study? 11 A No. 12 Q Have you studied the issue of voter 13 confusion in Wisconsin as to the voter photo ID law? 14 A Yes. 15 Q And in what way have you done that? 16 A There have been polls on this. There were 17 polls about -- before the 2014 election, when people 18 were confused not only about what particular ID they 19 needed, but whether they needed an ID or not. 20 And depending on the poll you look at, 21 we're not talking about one or two percent of the 22 public confused about something, even that basic, 23 far more basic than the intricacies of the voter ID 24 law. Anywhere from 25 percent to 50 percent of 25 registered voters. And when you looked at the
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1 registered voters, they were more -- those who were 2 confused were more heavily minority. 3 Q And so that's from 2014. 4 Have you done any studies of Wisconsin as 5 to voter confusion about photo ID in the last two 6 years? 7 A No. That's the last poll I saw on that. 8 Q You don't know if there have been any 9 other polls done since that time? 10 A I am not aware of any, but there certainly 11 may have been. 12 Q Are you offering any expert opinion in 13 this case about whether there is voter confusion 14 about the photo identification requirement in the 15 last two years? 16 A I might be. 17 Q You might be? 18 A I might be. 19 Q Where does that appear in either of your 20 expert reports? 21 A It wasn't in my expert reports. But 22 that's not what you asked me. You asked me if I 23 might be giving testimony on this. And, of course, 24 one of the things that I have been asked to do was 25 to respond to materials, analyses, reports, evidence	37 1 expert work? 2 A I doubt that. But I can't answer your 3 question because I have never counted separately 4 income from my expert work as opposed to lots of 5 other outside incomes. 6 Q Would it be fair to say that you've earned 7 millions of dollars from your expert work? 8 A Probably so over a more than 30-year 9 period. But again, I have not counted. 10 Q In the last year how much have you earned 11 from your expert -- paid expert work? 12 A I don't know. But a considerable amount, 13 because there has just been an avalanche of 14 litigation over the past -- just the thing about 15 being an expert. Sometimes you earn nothing, and 16 sometimes you earn a lot because of just the way in 17 which litigation goes. 18 And I have nothing to do with that. 19 That's, you know, just how our political and legal 20 system works. 21 Q And you said you testified recently in the 22 Virginia case in trial. Correct? 23 A Yes. 24 Q And so you were represented -- or you were 25 testifying for the plaintiffs in that case?
1 presented by the state or by experts for the state. 2 And I did see some discussion of that 3 issue in one of the depositions that I briefly 4 reviewed. 5 Q Okay. 6 A So the state did bring that up. 7 Q And we're going to be talking about the 8 poll that you mentioned, very later on in this 9 deposition. It's the Marquette University Law 10 School poll. Is that the one you're talking about? 11 A Yes. 12 Q Okay. We talked a little bit about your 13 past expert work. How many cases have you been 14 involved in as a paid expert? 15 A Oh, my gosh. 16 Q Estimate. 17 A I never counted. 18 Q Eighty? 19 A Eighty-five or more. 20 Q Okay. Have you earned over \$2 million 21 from your expert work? 22 A You mean over the last 30-some-odd years? 23 Q Yes. 24 A Probably so. I've never counted. 25 Q Have you earned over \$5 million from your	38 1 A Yes. 2 Q In the last five years, have you testified 3 for the defendants in any case? 4 A Yes. 5 Q Which case? 6 A Two cases come to mind immediately. But I 7 think there are three, probably. So it's been a 8 number. 9 You want specifics -- 10 Q Yes. 11 A -- on the cases? Yeah. 12 The ones I recall, 2011 I testified in 13 court on behalf of the defendants in the State of 14 Illinois on the challenge to the State of Illinois 15 congressional redistricting plan. 16 I was also the expert for defendants in 17 Illinois in a case challenging the state legislative 18 redistricting plan. 19 I submitted reports in that case and was 20 deposed in that case but never ultimately testified 21 in court because the case was decided on summary 22 judgment. 23 And then just recently I testified via 24 report, because the judges did not ask for oral 25 testimony. They -- they based their opinion on

<p>41</p> <p>1 written submitted materials. And that was, I was 2 testifying on behalf of defendants on a challenge 3 brought by black plaintiffs against congressional 4 redistricting plan in the State of Florida. I think 5 the opinion on that just came out a couple of days 6 ago.</p> <p>7 Q Okay. So --</p> <p>8 A Those are the ones I recall.</p> <p>9 Q So of the approximately 85 cases in which 10 you have served as a paid expert, can you estimate 11 how many in which you've testified for the state or 12 the defendants?</p> <p>13 A I'd say a minority, but, you know, I 14 certainly have, as you've seen, even recently 15 testified for state and defendants.</p> <p>16 Q Five?</p> <p>17 A Oh, it's more than five.</p> <p>18 Q Ten?</p> <p>19 A At least ten.</p> <p>20 Q Fifteen?</p> <p>21 A I haven't counted, so...</p> <p>22 Q Twenty-five?</p> <p>23 MR. SPIVA: Objection. Calls for 24 speculation.</p> <p>25 You can answer.</p>	<p>43</p> <p>1 political history, quantitative methodologies, 2 political analysis, would qualify me as someone with 3 the expertise to testify on legislative intent. And 4 I have done so in quite a few cases.</p> <p>5 Q And when you say "historical analysis," I 6 think of the past, the far past. Your work in this 7 case is focused on the very recent past. Correct?</p> <p>8 A Yes. But I've got to qualify what you 9 say. My historical work goes right up to the 10 present. And I also do a lot of political analysis.</p> <p>11 In other words, for example, we talked 12 about the keys to the White House, my system for 13 predicting and explaining presidential election 14 results.</p> <p>15 I take that right up to the present, you 16 know. I predicted the 2012 election. I'm working 17 on predicting the 2016 American presidential 18 election.</p> <p>19 My book, my 2008 book on the rise of the 20 American conservative movement, took it right up to 21 the Bush administration.</p> <p>22 So it would be a misstatement to say my 23 work is only focused on the distant past. My work 24 combines and puts together work on the past going, 25 you know, well back into history, with considerable</p>
<p>42</p> <p>1 A I am speculating. I don't think it's 25.</p> <p>2 Q Okay.</p> <p>3 A Yeah, I'm sure it's not 25, but it's 4 probably ten.</p> <p>5 Q And in the recent Virginia case, which was 6 about voter photo identification, your opinion went 7 to what issue?</p> <p>8 A It went to the issue of whether the 9 adoption of the photo identification law by the 10 State of Virginia was adopted with an intent to 11 discriminate against minorities in the State of 12 Virginia.</p> <p>13 And that, of course, involves broader 14 issues, as well, including responses. I believe I 15 testified in response to a number of reports 16 submitted by experts for defendants in that case.</p> <p>17 Q Are you an expert witness on legislative 18 intent?</p> <p>19 A I have testified on legislative intent in 20 quite a few cases.</p> <p>21 Q You consider yourself an expert on 22 legislative intent?</p> <p>23 A I'm not sure, you know, anyone would 24 narrowly define themselves as an expert in something 25 that specific. But certainly my expertise in</p>	<p>44</p> <p>1 analysis of the current political situation, as 2 well.</p> <p>3 Q Analyzing the current political situation, 4 is that something a historian does?</p> <p>5 A It's something absolutely as a political 6 historian, I also consider myself a political 7 analyst.</p> <p>8 I'm a political historian of recent 9 America. And as a political historian of recent 10 America, I take my work right up to the present day. 11 And my work deals with many, many contemporary 12 issues.</p> <p>13 Q And in the Virginia case that we were just 14 talking about, your opinion was that the voter photo 15 identification requirement showed an intent on the 16 part of the legislature to intentionally 17 discriminate against racial minorities?</p> <p>18 A Yes.</p> <p>19 Q And what were the primary reasons for that 20 conclusion?</p> <p>21 A I'm trying to distinguish Virginia at the 22 moment from the other cases.</p> <p>23 The strong political motivation to limit 24 voting opportunities for minorities, given recent 25 turnout and political voting trends in the State of</p>

45 <p>1 Virginia, the history of discrimination in Virginia, 2 the sequence of events leading to the adoption of 3 the photo voter ID law, including the control of the 4 governorship and the legislature on the part of 5 Republicans. The similarity of what was going on in 6 Virginia to what was going on in other 7 Republican-dominated states facing similar political 8 realities.</p> <p>9 The socio-economic disparities between 10 minorities and whites in Virginia. The disparities 11 in the possession of the most common forms of voter 12 photo identification in Virginia. Contemporary 13 statements made by Republican consultants. My 14 analysis of the justifications put forth by 15 political leaders for the voter -- voter photo ID 16 law.</p> <p>17 And I looked at some of the same studies, 18 like the Texas study I looked at here, provisional 19 ballot. It's based on no photo voter ID in -- in 20 Virginia. I mean, that's --</p> <p>21 Q Good memory.</p> <p>22 A Nine or ten things.</p> <p>23 Q Good memory.</p> <p>24 So did you look at whether Virginians 25 favored a voter photo ID requirement?</p>	47 <p>1 we think they need to be justified by real, concrete 2 evidence of voter fraud and, B, we think people 3 ought to be able who can't get photo IDs, ought to 4 be able to vote by affidavit.</p> <p>5 And, in fact, North Carolina did modify 6 its photo voter ID law to have a form of affidavit 7 voting. That is, you could go to the polls. And if 8 you don't have an acceptable photo ID, you could 9 sign an affidavit of reasonable impediment, with 10 lots and lots of options, and still vote. That fit 11 what the polls were showing.</p> <p>12 Q In Virginia did African-Americans favor a 13 voter photo ID requirement?</p> <p>14 A I don't recall. It's usually fairly close 15 on African-Americans. But, again, you know, a 16 majority of African-Americans have photo voter IDs. 17 So it's not surprising. But it's always lower. 18 Support by African-Americans is always lower than 19 support for voter photo ID than whites, at least in 20 the polls that I've seen. And I've seen a lot of 21 them.</p> <p>22 Q In Virginia, then, how did you deal with 23 the issue that was suggested that legislators were 24 responding to their constituencies in enacting a 25 voter photo ID requirement?</p>
46 <p>1 A Absolutely.</p> <p>2 Q And did they?</p> <p>3 A You find fairly universal support for 4 voter photo ID. But I've got to qualify that in a 5 number of ways.</p> <p>6 First, that's not surprising. Most people 7 have driver's licenses, for example. We are not 8 talking about something that affects 50 percent of 9 voters. We're talking about something that may 10 affect, ten, 15, five percent of voters.</p> <p>11 So for the great majority of people, sure, 12 why not support voter photo ID.</p> <p>13 But even more importantly, these polls are 14 generic. They talk generally about photo voter ID. 15 They don't talk about specifics of voter photo ID.</p> <p>16 For example, would voters actually support 17 the way in which the voter photo ID law is written 18 in Virginia or the way it's written in Wisconsin. 19 We don't have direct information on that.</p> <p>20 We also have some very interesting polling 21 data from North Carolina that I am obviously well 22 familiar with, having been in the North Carolina 23 case in which they say, yes, we support voter photo 24 ID.</p> <p>25 But, Number 1, by very large majorities,</p>	48 <p>1 A I responded to that in several ways. 2 First of all, in that same poll you had 3 other issues on which voters had expressed just as 4 powerful support as they had for voter photo ID, but 5 the legislature did not act upon those other 6 measures; such as the automatic re-enfranchisement 7 of felons. And, you know, it's hard to say that 8 they were responding to their constituents. 9 Secondly, the poll occurred after the law 10 was already put into effect. So it's a little hard 11 to say something that happened after the law 12 explained it. 13 And, in addition, as I mentioned, these 14 are generic polls. They don't necessarily comport 15 to any specific voter photo ID. And there was never 16 any demonstration in Virginia that I saw that the 17 issue mattered to voters. 18 You know, it's one thing to say 65 percent 19 support photo identification; it's another thing to 20 say it made one bit of difference. 21 Q Nationally, is there overwhelming support 22 for voter photo ID requirement? 23 A Yes, there is -- you know, I don't know 24 about overwhelming, but there is certainly majority 25 support nationally.</p>

<p>49</p> <p>1 Again, generically.</p> <p>2 Q Why don't we just get right into the</p> <p>3 expert report.</p> <p>4 A Sure.</p> <p>5 Q The way I've put it together, there is the</p> <p>6 report and then there are two attachments. And I'm</p> <p>7 just going to consider that all one exhibit.</p> <p>8 A That's fine.</p> <p>9 MR. KAWSKI: So this will be Exhibit 1.</p> <p>10 (Lichtman Deposition Exhibit 1 marked for</p> <p>11 identification and is attached to the transcript.)</p> <p>12 MR. SPIVA: Before you start asking</p> <p>13 questions on that, can we take a break?</p> <p>14 MR. KAWSKI: Sure.</p> <p>15 (A recess was taken.)</p> <p>16 BY MR. KAWSKI:</p> <p>17 Q So we've marked Exhibit 1, which has three</p> <p>18 parts, but really it's all one item. And it's</p> <p>19 before you, Dr. Lichtman. What is Exhibit 1?</p> <p>20 A My initial report.</p> <p>21 Q And in this case?</p> <p>22 A Oh, yes.</p> <p>23 Q And in addition to your report, we have</p> <p>24 Exhibit 1, which is your CV. Correct?</p> <p>25 A Yes.</p>	<p>1 experts did that.</p> <p>2 I looked at things like a voter turnout</p> <p>3 and registration and election returns, but not</p> <p>4 getting into the voter files.</p> <p>5 Q Did you look at Department of Motor</p> <p>6 Vehicles data?</p> <p>7 A I'm not sure I did for the initial report,</p> <p>8 because I didn't have it. But I think I certainly</p> <p>9 did on the second report, when data began to come</p> <p>10 in, and my understanding is it is still coming in.</p> <p>11 Q Okay. You did not conduct any surveys</p> <p>12 yourself to form your opinions in this case?</p> <p>13 A I did not.</p> <p>14 Q And you did not review municipal-level</p> <p>15 data of voting for this case?</p> <p>16 A I did, actually.</p> <p>17 Q You did?</p> <p>18 A I think it's in my second report, though,</p> <p>19 not in my first report.</p> <p>20 Q Okay. We'll get to that.</p> <p>21 What type of municipal data are we talking</p> <p>22 about?</p> <p>23 A Turnout data.</p> <p>24 Q Okay.</p> <p>25 A Because I believe Dr. Hood, I think it</p>
<p>50</p> <p>1 Q And Exhibit 2, which is a list of cases in</p> <p>2 which you've been involved. Correct?</p> <p>3 A Yes.</p> <p>4 Q Okay. I just want to ask you as a general</p> <p>5 matter what data you relied upon in preparing -- or</p> <p>6 informing opinions in which you asserted in this</p> <p>7 report.</p> <p>8 A Yes, I think I have a paragraph on that --</p> <p>9 Q Okay.</p> <p>10 A -- on Page 3.</p> <p>11 Q Okay.</p> <p>12 A I don't know if you want me to repeat it</p> <p>13 or you want to just read it.</p> <p>14 Q Which paragraph?</p> <p>15 A It's the last full paragraph on the bottom</p> <p>16 of Page 3.</p> <p>17 Q Okay.</p> <p>18 A It is a pretty broad, you know, array of</p> <p>19 data.</p> <p>20 Q When -- on Page 3, where you state, "My</p> <p>21 analysis draws upon the Wisconsin Government</p> <p>22 Accountability Board's GAB database," do you mean</p> <p>23 the SVRS database?</p> <p>24 A I don't think so. I don't think I went</p> <p>25 into the individual voter files. I think other</p>	<p>52</p> <p>1 was, had made some analyses of provisional balloting</p> <p>2 in off-year elections. And I looked at his backup</p> <p>3 data, and I did some research of my own on local</p> <p>4 elections.</p> <p>5 Q Have you looked at provisional ballot data</p> <p>6 for the most recent two elections in Wisconsin?</p> <p>7 A I've asked for it, and I did receive for,</p> <p>8 I believe it was the 2015, some provisional ballot</p> <p>9 data from Milwaukee.</p> <p>10 And other than that, I've only seen</p> <p>11 newspaper accounts. I have not received as yet</p> <p>12 official provisional ballot data.</p> <p>13 I would like to.</p> <p>14 Q So nothing for 2016.</p> <p>15 A Just -- there was just a newspaper article</p> <p>16 about it. And I also discussed it with one of the</p> <p>17 attorneys who had talked to I believe an election</p> <p>18 official in Madison. But I did not see actual data.</p> <p>19 I just kind of got a report of that interview.</p> <p>20 Q Okay. If you do obtain the provisional</p> <p>21 ballot data for 2016, you intend to form opinions</p> <p>22 about it?</p> <p>23 A Probably.</p> <p>24 Q Okay.</p> <p>25 A I mean, I can't say, since I haven't seen</p>

1 it. But most likely. 2 Q Okay. In preparing for this case, did you 3 read Wisconsin law, the statutes, administrative 4 code? 5 A Some of it. I mean, I don't remember 6 exactly, but some of it. 7 Q Did you read the requirements that the DMV 8 has for obtaining ID cards? 9 A I believe there is not an official manual 10 that goes through the exact procedures that one has 11 to go through to get an ID card. 12 My understanding from reading the 13 depositions on this is that it's a discretionary 14 matter. That there's not a manual which spells out 15 exactly what it is you have to do to get an ID card. 16 That there's a lot of discretion involved in the 17 process. 18 So to the extent, you know, I could, I 19 read the depos and tried to figure out the process. 20 But I'm not surprised that it's been such a 21 difficult and tortuous process for the individual 22 voter. 23 Q That confuses me. Because have you read 24 the Wisconsin Administrative Code Chapter Trans, 25 T-R-A-N-S, 102?	53 1 A Yes, I have. 2 Q -- in Wisconsin? 3 And have you seen the guides that are 4 available on that website that give step-by-step 5 instructions for people to obtain ID cards? 6 A Yes. And I think I reported some of that 7 in here. That's right. 8 Q But your opinion is still that the process 9 is confusing? 10 A I think the process is confusing, from 11 what I've read in the depositions. And there -- I 12 understand there are a bunch more depositions, which 13 may clarify things for me or not, which I will look 14 at, from DMV officials. 15 But my understanding is there is a lot of 16 discretion involved in this process. 17 Q You understand, though, that process in 18 which there is discretion that is the subject of the 19 depositions does not apply to the hundreds and 20 hundreds of thousands of people that have obtained a 21 free ID card? You do understand that. Correct? 22 MR. SPIVA: Objection to form. 23 But you can answer. 24 A Yeah, I'm not sure the hundreds of 25 thousands of people that you're referring to.
54 1 A I don't recall that. I do recall reading 2 administrative codes. And I think I even put that 3 down in my report of what it takes to get a free 4 photo voter ID. 5 But reading the depositions indicated to 6 me that this is not a cut-and-dried process. That 7 there is a lot of discretion and a lot of 8 uncertainty, which is also what I found in reading 9 the individual records. 10 So it's not as if one could just look at 11 some manual and say, Oh, I know exactly, you know, 12 what it takes to get a photo ID card in Wisconsin. 13 Q So you understand that the depositions 14 you're reading are about the extraordinary proof ID 15 petition process. Correct? 16 A Correct. 17 Q And that that process has only been used 18 by approximately 12 to 13 hundred individuals? 19 A That's correct. Although I'm not sure the 20 depositions were entirely limited to that. 21 Q You realize -- 22 A I think they talked about more broadly the 23 entire process for obtaining a free photo voter ID 24 card. 25 Q Have you looked at the DMV's website --	54 1 But I'm not convinced there's no 2 discretion in the process at all, given from what 3 I've read in the depositions there does seem to be 4 some discretion. And again, there's a whole bunch 5 more depositions which may clarify this for me. 6 But, you know, I am a political historian. 7 I know how these things work. And things may look 8 cut and dry but they're often not, because you're 9 dealing with human beings. 10 Q So what are the requirements to obtain a 11 driver license in Wisconsin? 12 A Well, you've got to have proof of 13 identity, proof of citizenship or permanent legal 14 status in the State of Wisconsin. I believe you've 15 got to pass a driver's test, and I think there's a 16 questionnaire about having medical conditions that 17 might disqualify you from getting a driver's 18 license. 19 Q What about proof of identity? 20 A I think I mentioned that. If I didn't, I 21 meant to. 22 Q What about proof of residence? 23 MR. SPIVA: Objection. Asked and 24 answered. 25 You can answer.

1 A I think I mentioned that, too, yeah. 2 Q So is it your position that the Wisconsin 3 administrative code does not set forth the 4 requirements for obtaining a driver license or a 5 state ID card? 6 A I didn't say -- I didn't say it didn't. I 7 said it did. It's just in terms of the free ID 8 card, from my reading of the depositions, it did 9 seem like there was a lot of discretion involved in 10 that process. Certainly in the IDPP process, no 11 doubt about that. 12 Now, the depositions were not in my mind 13 entirely clear about how much discretion there was 14 in the entire process, and maybe that will become 15 clearer when I read the new depositions. 16 Q Okay. When did the voter photo ID law go 17 into effect in Wisconsin? 18 A I believe it is in effect, went into 19 effect for the 2016 primaries and was in effect for 20 an off-year election, as well. I don't think any 21 general, you know, major general election like a 22 midterm or a presidential year has yet experienced 23 the photo ID requirement. 24 Q Since the time that the voter photo ID law 25 was enacted in Wisconsin, how many free ID cards for	57 1 Q Is it fair to say it's hundreds of 2 thousands? 3 A It could be. But I'm not sure it's large 4 hundreds of thousands. Again, because of some of 5 these issues of duplicates and renewals. 6 Q In Virginia did they have a free photo ID 7 program for voters? 8 A Yes. And it was very different from the 9 program in Wisconsin. 10 Q How many IDs were issued -- 11 A Let me finish. 12 Q Go ahead. Go ahead. 13 A I was about to explain what the Virginia 14 free voter ID doesn't have all of the identification 15 requirements that Wisconsin does that has forced at 16 least 1300 people to go into the IDPP. 17 And, by the way, that does not 18 necessarily -- that number is not necessarily 19 indicative of those who tried to get a photo ID for 20 voting and couldn't. Not everyone who couldn't get 21 it otherwise necessarily is going to subject 22 themselves to another process. 23 I don't know how many -- there's no way of 24 knowing how many did not. But the 1300 is a minimal 25 number. But in Virginia it's very different.
1 the purposes of voting has Wisconsin issued? 2 A It's very unclear because of those who may 3 not need free IDs for voting might check that box 4 because, hey, I can get it for free, rather than 5 paying a fee. 6 But I do know, I did see the analysis of 7 that by your expert, Dr. Hood, which was fraught 8 with error. 9 Q How many IDs? That was my question. 10 A How many -- I don't understand your 11 question because are you talking about generally the 12 DMV issues nondriver's IDs, which could be used for 13 voting or not. So I'm not sure what specifically 14 you're asking me. 15 Also, a lot of the IDs that are issued by 16 the DMV are not brand-new IDs; they're duplicates 17 and renewals. 18 Q So my question, then, to clarify, is, what 19 is your understanding of how many people checked the 20 box to get a free ID card for purposes of voting 21 from the Wisconsin DMV since July 2011? 22 MR. SPIVA: Objection to form. 23 A I think I have those numbers in my 24 rebuttal report. I would rather not repeat them 25 from memory.	58 1 Virginia has an affidavit requirement. You simply 2 have to go to a state office and, if you're already 3 on the voting rolls, simply affirm your identity. 4 Which is what Virginia used to have, but 5 it had it right at the polls. So what they've done 6 is create two more steps for the voters. And the 7 state, as far as I can see, was unable to show any 8 issues with the affirmation process that -- you 9 know, that led to any kind of voter fraud. 10 Q How many free ID cards were issued for 11 voting in Virginia? 12 A I don't recall. I would have to review my 13 report. I'm sorry. 14 Q Does 800 sound about correct? 15 MR. SPIVA: Objection. 16 A I just don't recall. I would have to 17 look. 18 Q So you have no idea at all, you couldn't 19 estimate? 20 MR. SPIVA: Objection. Calls for 21 speculation. 22 A There have been a lot of cases that I've 23 been working on and, you know -- 24 Q Sure there are. 25 A -- without reviewing my report I don't

1 want to speculate. 2 Q Okay. I don't want you to speculate. 3 What is early voting? 4 A Early voting is voting prior to election 5 day. 6 Q Does Wisconsin have early voting? 7 A You can vote early in Wisconsin through a 8 no-excuse early absentee ballot. That's correct. 9 Q But is it truly early voting? 10 A I don't know what you mean by "truly early 11 voting." Lots and lots of voters in Wisconsin 12 manage to vote early. It's not one or two percent; 13 it's much larger than that. 14 Q Do their ballots count when they vote in 15 person absentee? Are they counted on the day they 16 vote in person absentee? 17 A I don't understand the question. Are 18 there -- are their ballots counted with respect to 19 the election? Yes. 20 Q So the votes are tabulated on the day that 21 they in person absentee vote? 22 A I didn't say that. 23 Q Okay. What did you say? 24 A I said their votes are counted as part of 25 the tabulation for the election results. I didn't	61 1 limit opportunities for minorities to vote, 2 particularly Hispanics and African-Americans, and 3 register in the State of Wisconsin. 4 And that, of course, leads to examination 5 of lots of other things, such as disparities in 6 socio-economics, disparities in possession of common 7 forms of identification, as well as many other 8 issues that I address in my two reports. 9 In addition, I was asked to respond to any 10 material presented by the state or by experts for 11 the state or other witnesses for the state. And as 12 I said, that's been a -- very much of an ongoing 13 process, given that data is still coming in. 14 Q You are not providing an expert opinion on 15 the number of voters who lack a form of qualifying 16 ID in Wisconsin. Correct? 17 A That's correct. 18 Q And you are not providing an expert 19 opinion regarding the turnout rates for any election 20 in Wisconsin. Correct? 21 MR. SPIVA: Objection to form. 22 A That's not true. I think I do -- I do 23 examine turnout. 24 Q Okay. Are you providing an expert opinion 25 regarding the state's interests that support the
62 1 say what day their votes were tabulated. 2 Q So if a voter votes in person absentee, is 3 it guaranteed that their vote will be tabulated? 4 A Well, it's never guaranteed that anyone's 5 vote will be tabulated. We know there are always 6 errors and mistakes. But your vote certainly should 7 be tabulated, barring some error or mistake. 8 Q What type of error or mistake with an 9 absentee ballot could result in it not being 10 tabulated in Wisconsin? 11 A I'm not sure I know all of the details. 12 But, you know, if you don't sign a ballot, that 13 might be one reason why a ballot might not be 14 tabulated. 15 Q So what are the topics that you're giving 16 an expert opinion on in this case? Just the general 17 topics. 18 A Yeah. I think I already mentioned my 19 report. You know, again, it's laid out here, but 20 I'll say it again. 21 My report is looking at the intent behind 22 not just the adoption of voter ID, but a host of 23 measures adopted with respect to voting and 24 registration between 2011 and 2014. Looking at 25 whether this panoply of changes had the intent to	62 1 challenge laws? 2 A Yes. 3 Q Are you providing an expert opinion 4 regarding whether voter photo ID laws deter people 5 from voting? 6 A Yes. 7 Q Are you providing an expert opinion 8 regarding whether voter photo ID laws will deter 9 voter fraud? 10 A Yes. 11 Q Okay. And where is that in your expert 12 report? 13 A I have to find it. But I do talk about 14 voter fraud in my expert report. And I talk about 15 it fairly extensively. 16 Q Okay. 17 A I talk about the fact that -- I think it's 18 on Page 20 through 22. 19 Q Okay. 20 A And if you want me to recount it, I will 21 recount it for you. 22 Q Not necessary. 23 Are you providing an opinion -- an expert 24 opinion regarding whether minority voter turnout 25 increased in Wisconsin from 2010 to 2014?

65 <p>1 A Only insofar as that might be responsive 2 to analyses that I've looked at by experts for 3 defendants. So I believe I am. 4 Q Okay. Are you providing an opinion 5 regarding whether minorities used in-person absentee 6 voting at a higher rate in 2014 than in 2010? 7 A I don't believe I looked directly at 8 minorities, but I did look at, because it was 9 highlighted by one of your experts, use of early 10 voting, changes over time in Madison and Milwaukee, 11 the two cities that have the bulk of the minority 12 population. Certainly the African-American 13 population, the bulk of, about two thirds, and a 14 very substantial component of the Hispanic 15 population, as well. 16 So that certainly bears on that, 17 particularly since your experts highlighted that as 18 one of the ways in which you can gain insight into 19 its effect on minorities. 20 Q Have you read Dr. Burden's and Dr. Mayor's 21 reports in this case? 22 A Some time ago I believe I did. 23 Q Are there any inconsistencies between your 24 report and their reports? 25 A I mean, I would have to go over it again</p>	67 <p>1 Supreme Court. That's on Page 3 of my report. In 2 which, in addition to direct evidence, it focuses on 3 a set of other pieces of evidence that directly bear 4 upon ascertaining intentional discrimination, 5 discriminatory impact, historical background, 6 sequence of events, procedural or substantive 7 deviations, and the direct evidence contemporaneous 8 viewpoints expressed by decision-makers. 9 And I also note, of course, that in this 10 day and age you're not going to have decision-makers 11 explicitly saying, By golly, you know, we're doing 12 this to limit minority voting because that helps 13 Republicans. Although, by golly, it has come as 14 close as I've ever seen here in Wisconsin. 15 Q So the Arlington Heights, these relevant 16 factors that you point to on Pages 3 and 4, how do 17 they work? Is it a checklist that you must meet 18 each of the five? 19 A Oh, no. They're guidelines. No such 20 thing as a checklist, where you, you know, have to 21 meet every single thing. 22 You know, if we had ten statements from 23 legislators, from all the legislative leaders 24 saying, Yeah, you know, we were behind this because 25 we wanted to limit minority voting because that gave</p>
66 <p>1 in detail. I wasn't looking at it for that. But 2 nothing leaped out at me when I looked at it. 3 Q Okay. All right. Let's look at Page 1. 4 I just want to talk about some language there that 5 you emphasized on Page 1 first. 6 In the first full paragraph, you see the 7 word "intent" is in italics? 8 A Yes. 9 Q "Intent to discriminate." What do you 10 mean by the word "intent"? What does that mean to 11 you? 12 A Intent refers to the motivation behind any 13 particular legislation or, for that matter, as a 14 historian you look at the intent behind any given 15 decision. 16 And so the intent is the motivation, the 17 reasons behind why legislation was adopted or why a 18 particular decision was made. 19 Q And does the intent in your mind have to 20 be shown through direct evidence, through something 21 less than direct evidence? What is necessary to 22 show intent the way you define it? 23 A Yeah, I think I lay that out in my report, 24 as well. Indicating that I follow the guidelines of 25 the Arlington Heights decision by the United States</p>	68 <p>1 us political advantage, we wouldn't necessarily have 2 to go through the other factors. 3 So it's nothing that mechanical. But, in 4 fact, I do consider every one of these factors in 5 my -- in my report. 6 Q How are the factors to be utilized? Is it 7 a balancing test? 8 A No. It's a narrative test. It's a test 9 of how the factors come together to give your 10 opinion. 11 Some of them do involve balancing. For 12 example, looking at the justifications for the law. 13 You would balance that against the realities. 14 So if they're saying, for example, By 15 golly, you know, we are adopting this law because 16 there is rampant fraud, because there's lots of 17 voter impersonation in the State of Wisconsin, then 18 you look at the reality and you see there 19 essentially isn't any at all, that would -- that 20 kind of balance would enter into your analysis. 21 Q Which of the five factors involves the 22 justifications for the law? 23 A Contemporaneous viewpoints expressed by 24 decision-makers. Those contemporaneous viewpoints 25 indicate the kinds of justifications that</p>

<p>1 decision-makers have put forth in their contentions 2 in support of the law.</p> <p>3 Q And so if I read the Arlington Heights 4 case, that's what the Supreme Court was talking 5 about?</p> <p>6 MR. SPIVA: Objection. Calls for a legal 7 conclusion.</p> <p>8 A I don't understand the question anyway. 9 Arlington Heights is talking about lots and lots of 10 things that it asks you to look at. It never said 11 this was exhaustive or complete or, you know, 12 necessarily the only way to look at it.</p> <p>13 But, you know, I've adopted this. And 14 more broadly, of course, I've applied my expertise 15 as an historian. As a historian, this is the kind 16 of thing we do all the time.</p> <p>17 If you shut off motivation and intent from 18 the writing of history, you cut out a huge swath of 19 historical scholarship. This is the kind of thing 20 that historians do all of the time.</p> <p>21 Q Are you an expert on intentional racial 22 discrimination?</p> <p>23 A You asked me a similar question before, 24 and I'll give you a similar answer.</p> <p>25 You know, that's too narrow a kind of</p>	<p>1 A Other scholars look at your work. 2 Q That's all it means?</p> <p>3 A That's what peer-reviewed means. It is 4 evaluation of your scholarship by other scholars in 5 the field.</p> <p>6 Now, you can be more specific, but 7 generically that's what peer-reviewed means.</p> <p>8 Q What other peer-reviewed scholarship have 9 you done on the issue of intentional racial 10 discrimination?</p> <p>11 A I would have to think about it. Yes. 12 Early on I did an article in the Journal of Negro 13 History, a peer-reviewed publication, that dealt 14 with the issue of intentional voter discrimination.</p> <p>15 Q Perhaps it would help --</p> <p>16 A And I believe I published a book chapter 17 that dealt with that, as well.</p> <p>18 Q Would it help to look at Exhibit 1, your 19 CV?</p> <p>20 A If you want to.</p> <p>21 Q Let's look at it. 22 So I know this is kind of long.</p> <p>23 A Yes, it is.</p> <p>24 Q There's a lot to remember.</p> <p>25 A Yes.</p>
<p>1 expertise. I'm an expert in political history. I'm 2 an expert in political analysis. I'm an expert in 3 quantitative analysis. I'm an expert in voting and 4 civil rights, which gives me the expertise to opine 5 on that particular subject matter.</p> <p>6 Q What scholarship have you done on that 7 subject matter?</p> <p>8 A What subject matter?</p> <p>9 Q Intentional racial discrimination.</p> <p>10 A Certainly my book on the rise of the 11 American conservative movement deals extensively 12 with the issue of intentional racial discrimination. 13 So that would be one example of scholarship that 14 addresses that issue fairly extensively.</p> <p>15 Q Is that a peer-reviewed publication?</p> <p>16 A It's an award-winning book. It's not an 17 article. It's much bigger, more ambitious book. 18 And it was a finalist for the National Book Critics 19 Circle Award in general nonfiction. That's every 20 nonfiction book published in the United States.</p> <p>21 Q Is that peer-reviewed scholarship?</p> <p>22 A Absolutely. The -- it never would have 23 gotten accepted if it wasn't peer-reviewed in the 24 first place.</p> <p>25 Q What does peer-reviewed mean?</p>	<p>1 Q Could you point me to the examples of 2 peer-reviewed scholarship in your CV that deal with 3 the issue of intentional racial discrimination?</p> <p>4 A Yes.</p> <p>5 Q Okay.</p> <p>6 A We already talked about my book, White 7 Protestant Nation, the Rise of the American 8 Conservative Movement.</p> <p>9 Q Uh-huh.</p> <p>10 A We talked about my article in the Journal 11 of Negro History.</p> <p>12 Q And which page is that on in this?</p> <p>13 A The first -- the first page under 14 Scholarly Articles. There doesn't seem to be page 15 numbers. Oh, Page 5. There it is.</p> <p>16 Q You're talking about the October 1969 17 article?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 A That directly dealt with that topic.</p> <p>21 To some extent I dealt with it in my book, 22 another book, Prejudice in the Old Politics.</p> <p>23 Q Okay.</p> <p>24 A Presidential election of 1928.</p> <p>25 I don't remember this article, to be</p>

<p>73</p> <p>1 honest with you. It was a long time ago. 2 Discriminatory Election Systems and the Political 3 Cohesion Doctrine obviously dealt with racial 4 discrimination.</p> <p>5 Q Let me stop you there.</p> <p>6 A Let me finish. I don't recall if that 7 article dealt with the issue of intent or not, and 8 it may have.</p> <p>9 Q And I'm talking about only peer-reviewed 10 journals. Is that one peer-reviewed?</p> <p>11 MR. SPIVA: Objection. That's a different 12 question than you asked.</p> <p>13 A Yeah, I'm not sure what you mean. But I 14 don't believe so.</p> <p>15 Q Okay.</p> <p>16 A Again, I don't recall all the details of 17 all of these articles. The article in the Journal 18 of Law and Politics on black/white voter 19 registration disparities, I don't remember if that 20 dealt with intentional discrimination or not. It 21 may have.</p> <p>22 That wasn't the focus of it. Obviously 23 the focus of it was documenting registration 24 disparities. But, obviously, there was a reason 25 behind these registration disparities that had to do</p>	<p>75</p> <p>1 So it's both articles and books.</p> <p>2 Q Do you sit on the editorial boards of any 3 journals?</p> <p>4 A No. I don't have time for that.</p> <p>5 Q Have you ever?</p> <p>6 A Yeah, I was once on the editorial board of 7 the International Journal of Information Systems. 8 But I really didn't do much, because I didn't have 9 time. They wanted me to be a -- one of the editors. 10 And I said you can use my name, but, you know, I'm 11 really not going to be able to get involved in this 12 because I don't have time.</p> <p>13 Q So you didn't -- did you peer-review any 14 articles?</p> <p>15 A I have peer-reviewed articles, absolutely, 16 for journals.</p> <p>17 Q Okay. But those four or five, again 18 peer-reviewed scholarship --</p> <p>19 A Right.</p> <p>20 Q -- including books, those four or five are 21 the only examples?</p> <p>22 A The only ones I can come up with at the 23 moment.</p> <p>24 As I told you, other scholarship may well 25 have addressed that issue even though it was not</p>
<p>74</p> <p>1 with intentional discrimination in the State of 2 Mississippi, particularly the vestiges of the dual 3 registration system.</p> <p>4 There may have been some discussion of it 5 in other articles and books, but I don't see 6 anything directly on it other than the things I've 7 already highlighted for you.</p> <p>8 Q So just so I'm clear on the question I 9 asked, in this 21-page Exhibit 1, I've asked you to 10 point me to the peer-reviewed scholarship about the 11 topic of intentional racial discrimination.</p> <p>12 Correct?</p> <p>13 A Yes.</p> <p>14 Q And you've pointed me to four, maybe five 15 examples.</p> <p>16 A That's about right.</p> <p>17 Q All of those are peer-reviewed journals?</p> <p>18 A Now you've changed your question again.</p> <p>19 First you said peer-reviewed scholarship, 20 now you said peer-reviewed journals. Books get 21 peer-reviewed, you have to understand, or they 22 wouldn't get published. And probably peer-reviewed 23 even more extensively than articles, because there 24 is a big commitment that a publisher has to make to 25 publishing a book.</p>	<p>76</p> <p>1 directly on the issue.</p> <p>2 Q Okay. What other qualifications do you 3 have to give an expert opinion on intentional racial 4 discrimination?</p> <p>5 MR. SPIVA: Objection. Other than what --</p> <p>6 MR. KAWSKI: Other than what he just 7 defined.</p> <p>8 A I've already gone over a lot of this. As 9 I said, I've been a practicing historian for 43 10 years. I have published, depending on how you 11 count, anywhere from seven to nine books, scores of 12 articles. I've won major national awards. And this 13 is what historians do. Historians assess and weigh 14 the intent behind -- as a political historian, 15 political acts and political decisions.</p> <p>16 Not to mention, of course, my experience 17 in voting rights. Extensive experience in voting 18 rights, as well as scholarship on voting rights and 19 civil rights.</p> <p>20 Q Have your expert opinions been subject to 21 any challenges in cases? And I mean challenges to 22 have them excluded.</p> <p>23 A Out of 85 cases, one failed.</p> <p>24 Q And what was that?</p> <p>25 A It was in I think the Jublieer political</p>

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1	gerrymandering case, when I was challenged about	1	treatment when it came to voting. You had to
2	opinions on political gerrymandering. And I	2	actually pass a referendum to even enable
3	remember I was driving back from the hearing, and	3	African-Americans to vote in the State of Wisconsin.
4	that quickly the judge rejected the challenge. It	4	There was the 5,000 rule, that only those
5	is the only time I have ever been challenged in, you	5	with -- in municipalities of 5,000 or more had to
6	know, 85-plus cases. And as I said, it was quickly	6	register, which obviously had a direct
7	dismissed.	7	discriminatory burden on African-Americans, who
8	Q So no one has filed a motion to exclude,	8	tended to live in more urban communities.
9	as far as you know --	9	The history of school segregation that was
10	A Oh, they filed motions to exclude.	10	not resolved in the major city until decades after
11	Absolutely. But, I mean, I don't know the details	11	the Brown vs. Board of Education. The lack of
12	of those motions. I'm not a lawyer.	12	Spanish-language ballots in the State of Wisconsin
13	But I'm not aware of ever my testimony	13	that required justice department intervention.
14	being excluded.	14	Those are some examples of official
15	Q Okay.	15	discrimination.
16	A And those exclusion motions, as I	16	Q Do you have any others?
17	understand them, don't have anything to do with my	17	A Well, these are just off the top of my
18	expertise. They have to do with legal issues.	18	head. As I said, I derived these from the Burden
19	Q Okay. Page 4.	19	report. I'm not saying those are exclusive, but
20	A Where are we on the -- still on the CV?	20	those are the four or five examples that come to
21	Q No. Off the CV, back to the report.	21	mind.
22	A We're off the CV. What are we on now?	22	Q With regard to the ballots, is that a
23	MR. SPIVA: Off the record.	23	state issue? When I say "state," I mean State of
24	(A discussion was held off the record.)	24	Wisconsin issue.
25	BY MR. KAWSKI:	25	A Regard to what ballots?
	78		80
1	Q Looking at Page 4 of the report. You have	1	Q The Spanish-language ballots issue you
2	a statement, "Wisconsin has a history of	2	just mentioned. Is that --
3	discrimination against African-Americans and	3	A Well, it's primarily a local issue. But
4	Hispanics that is reflected in current racial	4	certainly the state could have, you know, taken
5	disparities," and it goes on.	5	action. And local bodies are, you know, part of the
6	Do you see that?	6	state.
7	A Yeah.	7	Q What about the segregation issue; is that
8	Q When you say "Wisconsin has a history,"	8	a state issue?
9	are you talking about official state-sponsored	9	A Again, that is, I believe, an issue within
10	discrimination?	10	the City of Milwaukee. But certainly the state is
11	A There is certainly, that is an element of	11	involved and implicated in this -- in this as well.
12	it, yes.	12	Q And how so?
13	Q Okay. What --	13	A State certainly could have taken action to
14	A Not the only element.	14	deal with segregation within the City of Milwaukee.
15	Q What are the aspects of that	15	We've seen states intervene in many, many ways in
16	state-sponsored discrimination that you're	16	educational local systems. But the state did
17	highlighting in your opinion?	17	nothing.
18	A Well, as I said, this was something that I	18	Q Was that an example of intentional racial
19	derived from Professor Burden, who was directly	19	discrimination on the part of the state?
20	addressing the issue of the history of	20	A I didn't get into, on these historical
21	discrimination.	21	examples, whether the discrimination was intentional
22	But off the top of my head, I can mention	22	or not. I was simply looking at whether there was,
23	some of the things that historically involved	23	in fact, a history of discrimination.
24	official state action. Such as, back in the 19th	24	So that was not something that, you know,
25	century, singling out African-Americans for special	25	I specifically looked at.

<p>1 Q What about the ballots? Again, was that 2 an example of intentional racial discrimination on 3 the part of the State of Wisconsin?</p> <p>4 A Same answer. I did not go behind these 5 actions to determine whether they were intentional 6 or not. But things are rarely done by accident. 7 And my experience as an analyst is that 8 decision-makers understand the implications of 9 their -- you could not miss the fact that the 5,000 10 rule had a disparate impact upon minorities in 11 Wisconsin. And, obviously, the 19th century 12 provisions regarding voting were clearly 13 intentional.</p> <p>14 Q And how does that compare to a state like 15 Virginia in terms of examples of state-sponsored 16 official discrimination?</p> <p>17 A I didn't do a -- as I said, I didn't even 18 do this analysis for Wisconsin. I derived it 19 primarily from the Burden report. 20 So what I've conveyed to you is my memory 21 of what I read in the Burden report. But I am also 22 generally familiar with these histories. 23 It's a different situation. It's not a 24 southern state. And I have not gone down and done a 25 line-by-line comparison of Virginia and Wisconsin.</p>	<p>81</p> <p>1 But when you have things such as 2 segregated education systems, segregated housing 3 that separates minorities and whites, that is going 4 to have an implication on factors such as income, 5 education, health, and other standard socio-economic 6 measures.</p> <p>7 Q What have the defendants in this case -- I 8 mean, if you know who they are, what have they done 9 that has been an example of official state-sponsored 10 discrimination?</p> <p>11 A I'm not sure who the defendants are 12 exactly, so I can't answer your question.</p> <p>13 Q Well, I mean, the defendants are the 14 individual members of the Government Accountability 15 Board, and then the Secretary of the Department of 16 Transportation, and the administrator of the 17 Division of Motor Vehicles of the Department of 18 Transportation.</p> <p>19 So what have those individuals done?</p> <p>20 A Well, if you're talking about the 21 administrator of the Department of Transportation, I 22 think they have, in fact, engaged in discriminatory 23 practices.</p> <p>24 Q Racially discriminatory practices?</p> <p>25 A Racially discriminatory practices.</p>
<p>1 And you probably wouldn't, because, you know, the 2 histories are so different.</p> <p>3 Q So would Virginia, in your estimation, 4 have more specific examples of state-sponsored 5 discrimination, racial discrimination?</p> <p>6 A If you went back -- 7 MR. SPIVA: Just one second. 8 Objection to form. 9 You can answer.</p> <p>10 A Probably if you went back historically, 11 they would.</p> <p>12 Q Okay. Now, you talk about it in the same 13 paragraph where you mention Wisconsin has a history 14 of discrimination that is reflected in current 15 racial disparities on such socio-economic measures 16 as income, unemployment, poverty, education, 17 housing, the availability of vehicles and 18 telephones, and health.</p> <p>19 A Correct.</p> <p>20 Q So explain for me how those socio-economic 21 measures stem from the state-sponsored official 22 discrimination in Wisconsin.</p> <p>23 A Well, it's partly the state-sponsored, and 24 obviously partly nonstate-sponsored history of 25 discrimination.</p>	<p>82</p> <p>1 Because I think the denials of voter 2 identification cards under the law are very heavily 3 racially tilted. That is, at least in the ones I've 4 seen -- and as I said this is a moving target 5 because more are coming in -- those who were denied 6 free IDs were overwhelmingly Hispanics and 7 African-Americans. And, indeed, those in the 8 process where I actually had individual records were 9 overwhelmingly Hispanic and African-American. 10 And I think virtually all of the Hispanics 11 and African-Americans in this set of record were 12 denied IDs, and the three whites were given IDs. So 13 there was certainly, if you're talking about 14 Secretary of Transportation, which I believe 15 oversees the Department of Motor Vehicles, there 16 certainly is at least on its face evidence of racial 17 discrimination. 18 And there is so much discretion in that. 19 So it's not just some manual that everyone is 20 following that leads to these racially disparate 21 affects. But, again, this is a moving target. 22 There are depositions I haven't seen. There's 23 additional evidence that I haven't seen. 24 But so far there certainly seems to be 25 pretty clear evidence of racial discrimination, you</p>

1 know, going up to the Department of Transportation, 2 which has responsibility for overseeing the DMV. 3 Q So it's your opinion that the Secretary of 4 the Department of Transportation in Wisconsin is 5 engaged in intentional racial discrimination? 6 A I didn't say that. 7 Q Okay. What is your opinion, then? 8 A My opinion is that the process places 9 disparate burdens on African-Americans and 10 Hispanics, as compared to whites. It's a process 11 that is overseen by the Department of 12 Transportation. And it's a process fraught with 13 lots and lots of discretion. 14 So while I'm not saying the Secretary is 15 personally involved in intentionally discriminating, 16 I'm saying the process over which he presides is 17 racially discriminatory. And I think while, again, 18 there's lots of evidence I have to look at, there's 19 some inferences that one can draw about intent here. 20 That -- let me explain. We just had an 21 opinion from a three-judge panel of the fourth 22 circuit by Judge Easterbrook, who was the judge who 23 had overturned district court opinion by Judge 24 Adelman. And he pointed to this process and how it 25 was personally affecting individuals, denying them	85 1 this is materials you haven't had a chance to 2 review. 3 But you can answer. 4 A Yeah, I haven't had a chance to review. 5 Of course I just looked at it. It just came out. 6 But it strengthens my finding that this 7 was initially adopted and implemented with intent to 8 limit opportunities for minorities, particularly 9 Hispanics and African-Americans, to register and 10 vote in the State of Wisconsin. 11 And the reason is, this was rejected, an 12 affidavit option. It was voted down at the time 13 that Act 23 was adopted. The state has known for 14 some time about the difficulties of the IDPP 15 process, about people who were, you know, knowing -- 16 had any information that they were fraudsters. 17 And certainly they weren't. No fraudster 18 would go through this process if they weren't U.S. 19 citizens, and yet they were told they couldn't vote. 20 And only after the pressure of litigation 21 and the pressure of adverse opinion from the fourth 22 circuit did they suddenly wake up and say, Oh, maybe 23 we ought to do at least some minor thing to rectify 24 these problems, problems that were evident for a 25 very long time. At least since 2015.
86 1 the right to vote. Something I highlighted in my 2 report. I haven't seen anything like this since the 3 days of literacy tests. 4 And he says, you know, there can be a 5 corrective for this. Well, why didn't the state on 6 its own initiative move for a corrective? Why did 7 they let this process go on and on and on and on for 8 months and years, and had to be instructed by the 9 4th circuit to consider a corrective? 10 And all the sudden I see a memorandum from 11 the Governor talking about a possible corrective for 12 this, after they are forced to do so, essentially, 13 by the fourth circuit after they're facing 14 litigation. 15 Q Let's talk about that memorandum. So what 16 memorandum are you talking about? 17 A I just saw it. It was something about a 18 new rule that under certain circumstances would 19 enable persons to get a free ID by affidavit. 20 Q And so, I mean, I don't want you to 21 speculate about that. But how would that impact 22 your opinions in this case? 23 A Very directly. 24 MR. SPIVA: Well, I'm going to just lodge 25 an objection and caution you not to speculate, as	88 1 Q So at this point you don't understand what 2 that change to the IDPP is going to involve; do you? 3 A Not in detail. But that doesn't matter. 4 That's not my point. My point is quite a different 5 one. My point is, they only took action under 6 pressure. 7 Q When did you think -- 8 A Let me finish. 9 Q Okay. 10 A Very similar to what happened in the 11 petition process in the first place. 12 There was no petition process until the 13 State Supreme Court forced them to adopt a petition 14 process. 15 So we see a pattern here. We see a 16 pattern of the state not taking obvious amelioratory 17 steps which would ease the burden of this law upon 18 low-income persons, low-education persons, persons 19 with language difficulties, and minorities. 20 And, of course, the two are correlated. 21 And it's not as if the State of Wisconsin did not 22 have before it examples of other states that had 23 adopted these kind of amelioratory measures, like 24 South Carolina, where the court actually said this 25 was critical. This was critical in our providing

<p>1 preclearance to South Carolina.</p> <p>2 So it was a wealth of information that the 3 state already had, and they never acted until some 4 external agency forced them to.</p> <p>5 Q So going back to, just so I'm clear, it is 6 not your expert opinion that the Secretary of the 7 Department of Transportation is engaging in 8 intentional racial discrimination?</p> <p>9 MR. SPIVA: Object to form.</p> <p>10 But you can answer.</p> <p>11 A I think I already answered that.</p> <p>12 Q Okay.</p> <p>13 A As I said, I don't -- I have not looked at 14 any information coming directly from the Secretary. 15 But he is presiding over a discriminatory process. 16 That's all I can tell you.</p> <p>17 Q So who are the racists at the DMV --</p> <p>18 MR. SPIVA: Objection.</p> <p>19 Q -- that are engaging in this intentional 20 racial discrimination?</p> <p>21 A I --</p> <p>22 MR. SPIVA: Objection to form.</p> <p>23 But you can answer.</p> <p>24 A I never called anyone a racist.</p> <p>25 Q So who at the DMV is engaging in</p>	<p>89</p> <p>1 limiting their opportunity to register and vote.</p> <p>2 Q So the legislature has no oversight 3 directly over the IDPP. Is that right?</p> <p>4 A It doesn't directly oversee it. But it 5 certainly could hold hearings, legislature has that 6 power, on the IDPP process. And I am not aware that 7 it's held any hearings.</p> <p>8 And it certainly could have adopted, 9 either way back when in 2011 or once it was known 10 that this was a problematic process, an ameliorative 11 measure. It didn't do so.</p> <p>12 Q So it's your expert opinion that the 13 issues you've highlighted with the IDPP can be used 14 to ascertain legislative intent when the law was 15 passed in 2011?</p> <p>16 A No. You have not correctly analyzed my 17 position at all.</p> <p>18 I have lots of reasons, even before I knew 19 about the IDPP process, about what was going on in 20 2011. What I am saying is, now that I know 21 something about the IDPP process, and what was done 22 and what wasn't done, that reinforces my opinion 23 with regard to legislative intent.</p> <p>24 Q Page 4 of the report, you state that this 25 information was available to the legislature.</p>
<p>1 intentional racial discrimination?</p> <p>2 A You mean what particular persons?</p> <p>3 Q Yes.</p> <p>4 A I can't say what particular persons. I 5 can only talk about a process that is racially 6 discriminatory, that was known to be racially 7 discriminatory, and in which the state did not take 8 ameliorative action until lawsuits are filed, 9 they're facing liability, and get adverse opinion 10 from Judge Easterbrook.</p> <p>11 Q Do you agree, though, that for there to be 12 any intentional racial discrimination there would 13 have to be a person engaging in it?</p> <p>14 MR. SPIVA: Objection to the extent it 15 calls for a legal conclusion.</p> <p>16 A I don't think you have to psycho analyze 17 an individual person. But you could look at both 18 the circumstantial and direct evidence, and from 19 that draw inferences about intent.</p> <p>20 And in addition to the direct evidence, in 21 our colloquy that we've been having so far, I've 22 given ample reasons why one would draw the inference 23 that the state decision-makers, the governor, the 24 legislature, the ultimate authorities here, had 25 intent to discriminate against minorities by</p>	<p>90</p> <p>1 Do you see that?</p> <p>2 A I do.</p> <p>3 Q What evidence did you rely upon to 4 conclude that the information, while available, was 5 actually reviewed by the legislature?</p> <p>6 A Well, there is no way to directly know 7 what any legislative or legislative body in this 8 case reviewed, because this was adopted so quickly, 9 without extensive hearings and review.</p> <p>10 But I've been watching politics for 50 11 years. I've, you know, written extensively on 12 politics. I've been a redistricting advisor to 13 state and local governments. Politicians live and 14 breathe this stuff. They have to know about racial 15 disparities in socio-economic standings. They would 16 have to be -- you know, stop their ears and close 17 their eyes not to know these things.</p> <p>18 Because this relates to their careers and 19 their lives. And it's pretty common knowledge.</p> <p>20 Q In the same page you state that Wisconsin, 21 quote, "had an exemplary electoral system." And I 22 emphasize the word "had."</p> <p>23 A Where is that? I'm sorry.</p> <p>24 Q Third from the bottom bullet point, Page 25 4.</p>

<p>1 A Yes, that's correct.</p> <p>2 Q And I emphasize the word "had."</p> <p>3 A Correct.</p> <p>4 Q It is your opinion that Wisconsin no 5 longer has an exemplary electoral system?</p> <p>6 A Correct.</p> <p>7 Q And why is that?</p> <p>8 A Because of the voter ID law and these 9 other pieces of legislation that I cite make it less 10 exemplary -- less exemplary than it has been, in my 11 opinion.</p> <p>12 Q Next sentence of the same bullet point, 13 "It" -- meaning Wisconsin -- "was a national leader 14 in voter turnout."</p> <p>15 A That's correct.</p> <p>16 Q It is no longer a national leader in voter 17 turnout?</p> <p>18 A No, I didn't say that. But this is 19 critical. We're talking about at the time these 20 laws were adopted. Because this goes to intent. 21 It was one of the very few states that was 22 right at the top of the list in terms of election 23 administration and was one of the very few states 24 that was at the top of the list in terms of voter 25 turnout.</p>	<p>93</p> <p>1 turnout, exactly, you know, following intent. 2 But generally you cannot determine the 3 effects of racially discriminatory laws by aggregate 4 turnout, because so many factors are involved in 5 aggregate turnout.</p> <p>6 For example, in this primary, very rare to 7 have two very hot contests in both parties going on 8 at the same time. Didn't have that in 2012. Didn't 9 have that in 2008. This is something brand-new.</p> <p>10 We also had some very exciting and 11 interesting candidates. You know, Bernie Sanders, 12 someone pretty new on the Democratic side. Donald 13 Trump, someone quite new and controversial on the 14 Republican side.</p> <p>15 And you kind of had a -- both a pro and 16 con effect in stimulating turnout in the primary 17 election.</p> <p>18 There is also the efficiency of the get 19 out -- the vote campaign, as well as changes in the 20 population. You know, has the population increased 21 over this time as well.</p> <p>22 Those are just a few examples of things 23 that are big effects on aggregate turnouts. That's 24 why you've got to look at the individual level. And 25 I think I talked about this quite a bit in my</p>
<p>1 In other words, the system wasn't broken. 2 The system didn't need fixing. So one can't say, 3 Oh, we had to adopt 15 new measures because 4 Wisconsin was in trouble with when it came to 5 election administration and turnout.</p> <p>6 Q So has Wisconsin's voter turnout declined 7 since these measures have been enacted?</p> <p>8 A I think voter photo ID just came into play 9 recently. But so far, in the aggregate, no.</p> <p>10 Q And in the two most recent elections, 11 February and April 2016, in which voter photo ID was 12 in effect, how has turnout been?</p> <p>13 A I don't -- I don't recall the February 14 2015 turnout. But the turnout in the primary was 15 very strong.</p> <p>16 Q And was it, in fact, the highest turnout 17 in any presidential primary since 1972?</p> <p>18 A I believe that's right.</p> <p>19 Q How do you explain that?</p> <p>20 A You cannot measure a discriminatory system 21 by aggregate turnout. You have to look at what's 22 going on among the individuals.</p> <p>23 And I have not seen any individual level 24 analysis of 2016. I have seen some for 2014. And 25 you did see rising white relative to minority</p>	<p>94</p> <p>1 rebuttal report.</p> <p>2 Q So second to last bullet point on Page 4. 3 You state, "Wisconsin was the most restrictive 4 identification law in the nation at that time," 5 meaning in 2011?</p> <p>6 A That's correct.</p> <p>7 Q Using, again, the past tense "was," is it 8 now your position that Wisconsin is not the most 9 restrictive identification law in the nation?</p> <p>10 A Well, again, the reason I said "was," I 11 was looking at intent. And, you know, one of the 12 arguments that's always made in favor of voter ID, 13 Oh, we're just conforming to other states. So 14 Wisconsin doesn't conform to other states.</p> <p>15 And even today one could make an argument 16 it's certainly if not the most restrictive, it's one 17 of the most restrictive. One of the very few 18 restrictive voter ID laws in the country. Yes, that 19 continues to be the case.</p> <p>20 Q What about the recent change that the 21 legislature enacted allowing for veterans' ID cards?</p> <p>22 A That helps. But it still -- you know, 23 there's still lots of kinds of ID cards that are 24 either not involved or are written in a way that 25 makes it very restrictive.</p>

<p>97</p> <p>1 Plus, there is no alternative mechanism. 2 Plus, you have to have a voter ID for absentee 3 ballots. Plus, you have this very difficult process 4 for getting a free voter ID card.</p> <p>5 Q And you said that the legislature rejected 6 all amendments. I'm talking about on Page 5 you 7 talk about the amendments that were rejected, top 8 bullet point.</p> <p>9 A Yeah.</p> <p>10 Q You do acknowledge, though, that the 11 legislature enacted the free voter ID program. 12 Correct?</p> <p>13 A They had to, or the law would have been 14 declared -- clearly would have been struck down if 15 they had no free ID program.</p> <p>16 Q Okay. Now, something on Page 5 really 17 piqued my interest, which is the bullet point, third 18 from the last bullet point. "There is rare direct 19 evidence from a Republican decision-maker."</p> <p>20 Do you see that?</p> <p>21 A I do.</p> <p>22 Q What is that?</p> <p>23 A That's the Schultz evidence.</p> <p>24 Q Okay. And so that's later on it's at Page 25 40 or 50 something, Page 51?</p>	<p>99</p> <p>1 A In the spirit of the champion of the 1957 2 voting rights act. What was the 1957 voting rights 3 act designed to do? To combat racial discrimination 4 against minorities, particularly against 5 African-Americans. That's exactly what the 1957 6 voting rights act under Republican President Dwight 7 Eisenhower wanted to do.</p> <p>8 So clearly by referencing the 1957 voting 9 rights act, you're talking about race.</p> <p>10 Q So what I don't understand there is, 11 Schultz voted for the law. Correct?</p> <p>12 A Absolutely. That's what makes this 13 statement so significant.</p> <p>14 Q So how --</p> <p>15 A It's not -- let me finish. It's not some 16 Democrat grousing about the law.</p> <p>17 Q So how is he acting in the spirit of the 18 champion of the 1957 voting rights act then? He 19 would seem to, if he was passing voter ID, he is 20 saying I was acting in the spirit of the champion of 21 the 1957 voting rights act?</p> <p>22 A Well, I think he said he's had second 23 thoughts about that. And he thinks that what he did 24 in voting for that was mistaken, and not in the 25 spirit, which he has tried to represent in his</p>
<p>98</p> <p>1 A Something like that. It's well into my 2 report.</p> <p>3 Q That --</p> <p>4 A Let me finish. That is quite 5 extraordinary for someone who voted for the law, who 6 was a long-time Republican, to say, you know, 7 I've -- I've now realized, you know, what my 8 colleagues really doing was suppressing votes, and 9 they shouldn't be doing that. We should be reaching 10 out. We should be doing what Eisenhower did.</p> <p>11 That's really extraordinary, to have a 12 decision-maker directly say, this law was designed 13 to suppress -- suppress votes.</p> <p>14 Q Now, when you say -- that statement from 15 Senator Schultz, what aspect of it indicates to you 16 that it was a racial motivation to suppress votes?</p> <p>17 A Well, let's look at it specifically, 18 rather than trying to -- what page did you say it 19 was on? It's well into the report.</p> <p>20 Q Yeah. We're getting ahead of ourselves.</p> <p>21 A I think it's on 51.</p> <p>22 Q Okay. I think you're right.</p> <p>23 A And I think it's filled with racial 24 reference.</p> <p>25 Q Okay. Highlight them for me.</p>	<p>100</p> <p>1 political career as a Republican in Wisconsin.</p> <p>2 Q But that is not, in fact, what he said.</p> <p>3 A What is not, in fact, what he said?</p> <p>4 Q What you just said.</p> <p>5 A He absolutely talks about the 1957 voting 6 rights act.</p> <p>7 Q He says, "In the spirit of the champion of 8 the 1957 voting rights act, I have been trying to 9 send a message that we are not encouraging voting."</p> <p>10 A Right.</p> <p>11 Q So how is voting for the law you say is 12 intentionally racially discriminatory in the spirit 13 of the 1957 voting rights act?</p> <p>14 A It isn't. And I think it's quite clear 15 from these statements that he regrets what he did in 16 voting for Act 23. You know, if he still believed 17 Act 23 was not racially discriminatory, he wouldn't 18 be saying all these things.</p> <p>19 Q So he is -- is he saying that -- you're 20 saying that this is evidence that he believes he was 21 himself engaged in intentional racial 22 discrimination?</p> <p>23 A Not necessarily. But at least he was 24 going along, along with what he now believes to be 25 intentional racial discrimination, yes.</p>

<p>1 He doesn't go deeply into his own 2 motivations. But I think he makes clear that this 3 bill was adopted with the intent to suppress votes, 4 particularly of minorities.</p> <p>5 Q In doing legislative intent analysis, and 6 opining upon it --</p> <p>7 A Yes.</p> <p>8 Q -- is it common to look to statements made 9 post hoc, several years into the future after the 10 law was passed?</p> <p>11 A Certainly, if they cast light on what was 12 done at the time the law was passed. Particularly 13 by a decision-maker who voted for the law.</p> <p>14 I mean, it's not like this is some 15 ambitious politician trying to gain some political 16 advantage of this. He's at the end of his career. 17 He has no political motivation. If anything, this 18 is against his interest, because it goes against his 19 colleagues of many decades.</p> <p>20 And so, you know, that's one thing you 21 look at, you know, is there some other motivation 22 for making the statement. And quite the contrary. 23 There would be every reason to not jump into this 24 controversy at the end of your political career.</p> <p>25 Q Is there any other, as you say, rare</p>	<p>101</p> <p>1 by suppressing the votes of minorities, you're going 2 to get political advantage to your party. 3 I am not saying they are personally 4 racist. I don't know whether they are or not. But, 5 clearly, if voter ID was not suppressing the votes 6 of Democrats, it would not be helping Senator 7 Grothman to get the Republicans to win the general 8 election of 2016. 9 And we know what is the most loyal 10 Democratic base in the State of Wisconsin, and in 11 fact anywhere, is the African-American voter base. 12 And, secondly, the Latino voter base. 13 Q And so it is your opinion, then, that 14 voter ID laws suppress the vote of 15 African-Americans? 16 A Yes. And I haven't finished answering 17 your first question. I'll elaborate on that, if 18 you'd like. 19 But there is additional direct evidence 20 from a staffer, who I believe his name was Aulbaugh, 21 who is now running a coffee shop or some such. And 22 he was in on the meetings. 23 And he said quite clearly in his 24 opinion -- and he said he was a 30-year Republican 25 operative, he is, again, not someone who is involved</p>
<p>102</p> <p>1 direct evidence from a Republican decision-maker of 2 the intentional racial discrimination?</p> <p>3 A Absolutely.</p> <p>4 Q There is?</p> <p>5 A Yes. We have the statement that I think I 6 mentioned to you at the very beginning of this 7 deposition that just came out by now Congressman, 8 then Senator Grothman, who was very much involved in 9 passing these laws that I'm talking about.</p> <p>10 And he said quite explicitly, in helping 11 us to win the presidential election in Wisconsin, 12 that the voter ID law -- I'm not -- I am 13 paraphrasing -- is going to help us a little bit.</p> <p>14 Q And why would that be racist?</p> <p>15 A You're using a term that I'm not using. 16 I'm not saying he --</p> <p>17 Q Why would that be evidence of intentional 18 racial discrimination?</p> <p>19 MR. SPIVA: Wait. He is not finished.</p> <p>20 A I'm not finished.</p> <p>21 Q Okay.</p> <p>22 A You're using a term I have not used 23 anywhere in my report or anywhere in my testimony. 24 I am not accusing people of being racist. I am 25 accusing politicians of being politicians. That is,</p>	<p>104</p> <p>1 in politics and trying to get political advantage, 2 as far as I know.</p> <p>3 And he said clearly his understanding of 4 those meetings were that the Republicans involved 5 fully understood that this bill would give them 6 political advantage by limiting minority votes.</p> <p>7 Q Have you spoken with him?</p> <p>8 A No. I just watched his interview on 9 television.</p> <p>10 Q Okay.</p> <p>11 A He was pretty plain, what he had to say.</p> <p>12 Q Okay. So those three things, the Schultz 13 quote from Page 51 of your report, the Grothman 14 quote from very recently, and the Todd Aulbaugh 15 statements, those are the rare direct evidence --</p> <p>16 A There's another one.</p> <p>17 Q Okay.</p> <p>18 A Another Grothman. And that is not talking 19 about voter ID, but I believe he was talking about 20 early voting. Saying we want to nip it in the bud, 21 what's going on in Milwaukee and Madison.</p> <p>22 Q Okay.</p> <p>23 A Again, not talking about uniformity or, 24 you know, any of the other justifications. But, 25 clearly, he did not want to see the spread of early</p>

105	107
<p>1 voting practices. And, of course, early voting is 2 disproportionately used by minorities. 3 Q Anything else? Any other examples? 4 A Well, there are other examples outside of 5 Wisconsin by nationally prominent Republican 6 consultants. So there is a fellow by the name of 7 Trantor who works for Optimist Consulting, a 8 Republican consulting firm. And they specialize in 9 election dynamics and doing quantitative analysis of 10 elections.</p> <p>11 And he said very clearly we're benefited 12 by things like long lines and voter ID. We'll do 13 whatever it takes as political professionals to win 14 elections.</p> <p>15 You also have a -- it's a fairly old 16 statement, but it's by very, very prominent 17 Republican Paul Weyrich, one of the founders of the 18 modern conservative Republican party. Someone I 19 talk a lot about in my book, he's that famous.</p> <p>20 And he said, We don't want everyone to 21 vote. We benefit as Republicans when the vote is 22 limited.</p> <p>23 So while, you know, those four statements, 24 which is a lot of direct statements from any one 25 state, this sort of nationally prominent Republicans</p>	<p>1 MR. KAWSKI: Oh, sure. Off the record, 2 please. 3 (A recess was taken.) 4 BY MR. KAWSKI: 5 Q So we were talking about the direct 6 evidence of intentional racial discrimination that 7 you highlighted. 8 A Yes. 9 Q And we talked about a number of examples. 10 Are there others you can think of that you want to 11 highlight today? 12 A You know, we had certainly -- in the Texas 13 case we had seen some examples as well of 14 politicians talking about not wanting to enfranchise 15 African-Americans or Hispanics because that just 16 meant enfranchising Democratic voters. 17 So it's not as if what's being said here 18 in Wisconsin is out of line from what I've heard in 19 other places, as well. 20 Q Do you find the evidence from other states 21 to be relevant to the analysis of Wisconsin 22 legislative intent? 23 A Yes. 24 Q And why is that? 25 A Because I have a section in my report on</p>
106	108
<p>1 saying much the same thing. 2 And, of course, we're all familiar with 3 what, I think it was a speaker or a legislative 4 leader in Pennsylvania said something very similar 5 to what Grothman said about voter ID helping us in 6 this case to elect Romney in Pennsylvania. 7 Q So in doing analysis of legislative 8 intent, do we -- is it acceptable to look to the 9 statements of staff members of legislators? 10 A Of course. Staff memories are intimately 11 involved in the process of adopting legislation. 12 It's not just done by members of the legislatures 13 alone, but they're always consulting and working 14 with their staff. 15 And this guy was in the meeting. He was 16 there. He is an eyewitness. 17 Q What if it turns out he wasn't in the 18 meeting? 19 A Well, that would obviously diminish the 20 impact of what he had to say, of course. I 21 understand that. I'm only going on at this point 22 what I know. And I guess, you know, you can hash 23 that out at trial or whatever. 24 Q Sure. 25 A I need a break now.</p>	<p>1 this, where I show that other states are facing 2 similar situations, as in Wisconsin. You know, 3 demographic pressure on the white vote, the minority 4 vote being much more Democratic than the white vote. 5 And I have a table showing in virtually every 6 instance a recent adoption of voter photo ID laws. 7 It's been Republicans responsible for those laws. 8 So it's not as if Wisconsin is not part of 9 a pattern; it is. 10 Q Let's shift gears a little bit, then. 11 A Sure. 12 Q Just looking at Pages 6 through 14 of your 13 report. 14 A Yes. 15 Q You talk about and illustrate the 16 socio-economic factors that we talked about a little 17 earlier. Correct? You have tables that talk about 18 the differences and disparities between whites and 19 minorities -- 20 A Correct. 21 Q -- in various factors. 22 A That's right. 23 Q Could you explain how all of this 24 information about socio-economic disparities is 25 relevant to determining whether these laws were</p>

<p>1 passed with a racially discriminatory intent?</p> <p>2 A Yeah. I think it's directly relevant.</p> <p>3 Because whenever you're placing additional</p> <p>4 burdens on the opportunity to vote or to register,</p> <p>5 those burdens are not going to be felt uniformly</p> <p>6 across the persons in the state.</p> <p>7 That is, they're going to fall with</p> <p>8 special force upon those who have lower</p> <p>9 socio-economic standing.</p> <p>10 For example, education, income may</p> <p>11 directly affect whether or not you have a photo</p> <p>12 voter ID and your ability to navigate the entire</p> <p>13 process of voter photo identification. It may well</p> <p>14 affect your ability under various restrictions to</p> <p>15 register to vote.</p> <p>16 Whether you own a vehicle, whether you can</p> <p>17 get to certain places, whether you understand all of</p> <p>18 the laws. All of these things are directly and</p> <p>19 intimately tied to socio-economic standing.</p> <p>20 In fact, it is one of the best established</p> <p>21 findings of political history and political science</p> <p>22 that political participation is very much dependent</p> <p>23 upon socio-economic standing.</p> <p>24 Q Going ahead to Page 16.</p> <p>25 A Okay.</p>	<p>109</p> <p>1 That's correct. To show the trend and pattern.</p> <p>2 Q Do you know what the sample size for this</p> <p>3 exit poll in Table 6 was?</p> <p>4 A I don't recall exactly what the sample</p> <p>5 size was.</p> <p>6 Q Do you know what the margin of error was?</p> <p>7 A I don't recall exactly what the margin of</p> <p>8 error. And that would depend upon whether you</p> <p>9 wanted to do it at the .9 level, the .95 level,</p> <p>10 the .9. But these are the best estimates that we</p> <p>11 have. And I certainly didn't see anything in any of</p> <p>12 your expert reports challenging these because they</p> <p>13 were erroneous or the margin of error was too large.</p> <p>14 I saw your experts using the same exact</p> <p>15 exit polling results.</p> <p>16 Q So is it typical, though, to report a</p> <p>17 margin of error when you're reporting exit poll</p> <p>18 results?</p> <p>19 A Not usually. You know, when I've seen --</p> <p>20 because they are generally so well established and</p> <p>21 so well reliable, typically when I've seen exit</p> <p>22 polling reports, when they're not, you know, fine</p> <p>23 line for, like, a municipality but for a whole</p> <p>24 state, for a big election, I've just seen the point</p> <p>25 estimates. That's standard.</p>
<p>110</p> <p>1 Q I noticed that some of these tables</p> <p>2 reference exit polling conducted by Edison Research?</p> <p>3 A Yes.</p> <p>4 Q For example, Table 6.</p> <p>5 A Yes, that's correct.</p> <p>6 Q What is Edison Research?</p> <p>7 A They're just a group that does all the</p> <p>8 exit polling. Whenever you see CNN report the exit</p> <p>9 poll or NBC, or any of them -- it doesn't matter</p> <p>10 because they are all the same -- they're all</p> <p>11 conducted by the name exit polling outfit.</p> <p>12 So that's what they do.</p> <p>13 Q How reliable is exit polling?</p> <p>14 A It's pretty reliable. I mean, nothing is</p> <p>15 perfect in political analysis. But it's pretty well</p> <p>16 stood the test of time. Particularly when you're</p> <p>17 exit-polling something as major as a gubernatorial</p> <p>18 or a presidential contest.</p> <p>19 And they -- you know, they add up pretty</p> <p>20 well to the actual -- actual vote.</p> <p>21 Q So in Table 6, for example, in stating the</p> <p>22 results of this exit poll, you did not indicate what</p> <p>23 the margin of error was. Correct?</p> <p>24 A No. I did the best estimate that was</p> <p>25 available through the exit poll, the point estimate.</p>	<p>112</p> <p>1 Q So in social science, though, is it</p> <p>2 typical to report a margin of error in your</p> <p>3 analysis?</p> <p>4 A Sometimes you do; sometimes you don't.</p> <p>5 Depending upon the purpose.</p> <p>6 I'm just looking here at the overall</p> <p>7 trend. I'm not trying to specify, you know, to the</p> <p>8 tenth of a percentage point what the exact turnout</p> <p>9 was.</p> <p>10 Q So we don't know how many people were</p> <p>11 surveyed for the Table 6 data?</p> <p>12 A I don't recall the exact number. But it's</p> <p>13 not a little, tiny sample. It's not like 50 or 100</p> <p>14 people. It's much larger than that.</p> <p>15 Q Okay. And, again, is it standard in</p> <p>16 social science to indicate for a survey how many</p> <p>17 people were surveyed?</p> <p>18 A These exit polls are so standard that, as</p> <p>19 I have seen them used, they're used exactly the way</p> <p>20 I've used them and exactly the way your experts have</p> <p>21 used them.</p> <p>22 Q Okay. Page 17, next page. First</p> <p>23 sentence. "Exit poll data demonstrates that</p> <p>24 Republican electoral success in Wisconsin turns in</p> <p>25 part on the white voter turnout relative to minority</p>

113	115
<p>1 turnout."</p> <p>2 Do you see that?</p> <p>3 A Of course.</p> <p>4 Q You say in part it turns on white voter</p> <p>5 turnout relative. What other things would impact</p> <p>6 Republican electoral success in Wisconsin?</p> <p>7 A Well, all kinds of things could impact,</p> <p>8 such as the strength and weaknesses of particular</p> <p>9 candidates, scandals that might affect candidates,</p> <p>10 the particular issues that are raised in election.</p> <p>11 These are all particularized factors to particular</p> <p>12 elections. They are obviously going to have an</p> <p>13 effect.</p> <p>14 But as a generic factor that affects</p> <p>15 essentially every election, is the relative shares</p> <p>16 of the vote cast by whites and minorities. Because</p> <p>17 there is such a big gap between them.</p> <p>18 Q Is it possible to control for -- in an</p> <p>19 analysis control for those factors that you just</p> <p>20 mentioned, such as scandals, interest, so forth?</p> <p>21 A In a sense I did.</p> <p>22 Q Okay.</p> <p>23 A Not formally. But in practice. Because</p> <p>24 I've looked at so many elections.</p> <p>25 It's not as if I just looked at one</p>	<p>1 elections, some of which involve incumbents, some of</p> <p>2 which don't involve incumbents. And, yet, we have</p> <p>3 the same kind of patterns holding.</p> <p>4 Q I mean, in 2010 in Wisconsin, are you</p> <p>5 aware that there was -- perhaps it's beyond</p> <p>6 Wisconsin, there was a Republican groundswell of</p> <p>7 support and Republican candidates took very many</p> <p>8 races in Wisconsin. Correct?</p> <p>9 A That's right.</p> <p>10 Q Would it be possible to control for</p> <p>11 something like that in terms of a model you might</p> <p>12 make to determine whether minority turnout is truly</p> <p>13 impacting Republican success?</p> <p>14 A Well, we're not looking at turnout in this</p> <p>15 table.</p> <p>16 Q Okay.</p> <p>17 A We're actually looking at the voting</p> <p>18 patterns of minorities and whites. And they are no</p> <p>19 different in that particular election than they are</p> <p>20 in lots of other elections. All of them show a</p> <p>21 similar gap between white and black voting,</p> <p>22 regardless of any particular circumstance, whether</p> <p>23 it's a good Republican year like 2006 or a good</p> <p>24 Democratic year.</p> <p>25 You may see the levels change. In other</p>
114	116
<p>1 election. I looked at a great variety of elections,</p> <p>2 with a great variety of candidates, a great variety</p> <p>3 of personalities. And you consistently see in every</p> <p>4 single one of these elections a very large gap</p> <p>5 between whites and blacks.</p> <p>6 We obviously have less data for Hispanics,</p> <p>7 but to the extent we have data, it shows a gap</p> <p>8 between whites and Hispanics as well.</p> <p>9 So these findings are not being jiggered</p> <p>10 in any particular significant way by the</p> <p>11 particularized features of these elections, because</p> <p>12 I've looked at so many and they all show the same</p> <p>13 pattern.</p> <p>14 Q For example, in the -- on Page 18, Table</p> <p>15 8, in the 2010 U.S. Senate race, Feingold versus</p> <p>16 Johnson.</p> <p>17 A Yeah.</p> <p>18 Q It would be possible to control for</p> <p>19 incumbency when Feingold was the incumbent there?</p> <p>20 A No.</p> <p>21 Q Why not?</p> <p>22 A You would have to do a whole series of</p> <p>23 analysis. You can't control for incumbency in one</p> <p>24 individual election.</p> <p>25 But as you know here, we've got lots of</p>	<p>1 words, in a good Republican year you're going to see</p> <p>2 generally a higher level of votes for Republicans.</p> <p>3 That follows automatically, because otherwise it</p> <p>4 wouldn't be a good Republican year.</p> <p>5 And in a good Democratic year you'll see</p> <p>6 lower levels of results for Republicans.</p> <p>7 But whether it's a good Democratic year or</p> <p>8 a good Republican year, you see similar patterns of</p> <p>9 difference, which is what this table is designed to</p> <p>10 demonstrate.</p> <p>11 Q And this very topic comes up on Page 21 of</p> <p>12 your report. You say, Then in 2010 a good</p> <p>13 Republican year nationally, Republicans gained</p> <p>14 control.</p> <p>15 Do you see that?</p> <p>16 A Of course.</p> <p>17 Q Why was 2010 a good Republican year</p> <p>18 nationally?</p> <p>19 A You want me to give you my explanation of</p> <p>20 it?</p> <p>21 Q Short explanation.</p> <p>22 A Yeah, I mean, you're asking me these</p> <p>23 open-ended questions. And I'll try to be brief.</p> <p>24 There's some -- first there's a general</p> <p>25 theory, called surge and decline.</p>

1 Are you familiar with that? 2 Q Yeah. 3 A You get a surge for the presidential 4 candidates, you got a surge for Obama in 2008. And 5 then a lot of those voters who surge for Obama were 6 not necessarily going to come back and vote for the 7 Democrats in 2010. So midterm elections generally, 8 absent special circumstances like the impeachment of 9 Bill Clinton, generally go against the party holding 10 the White House. 11 And I think more generically, you know, 12 there was a lot of dissatisfaction in 2010 with what 13 was going on in the country, what was going on in 14 the Obama administration. A lot of analysts, 15 including myself, called this a no election. People 16 are unhappy so they're voting no. And who are they 17 voting no for? The party that's in control. 18 That's a very brief and not complete 19 shorthand explanation of why 2010 was across the 20 board a good Republican year. 21 Q And based on what you know, that same 22 explanation would apply to why it was a good 23 Republican year in Wisconsin? 24 A As a generic explanation, yes. It was a 25 good Republican year almost everywhere. Wisconsin	117 1 Q What would you like to see to have enough 2 data to make a judgment? 3 A Well, at least a presidential and a 4 midterm. 5 Q Okay. So perhaps after the 2016 6 presidential and the 2018 midterm with voter ID in 7 place, then we might know? 8 A It's not just voter ID in place. It's all 9 the other things. 10 Nor am I making an argument that voter ID 11 and these other laws are necessarily going to be 12 manifest in a change in aggregate turnout. We've 13 already gone through that whole colloquy. 14 Q You've read Professor McCarty's report? 15 A I don't remember it. My general 16 impression was it didn't directly deal with the same 17 issues I was dealing with, so I glanced at it. 18 Q Okay. 19 A I -- 20 Q But you read Professor Hood's report? 21 A Oh, yes. Professor Hood's report I've 22 certainly read. 23 Q Okay. And so what -- do you recall what 24 he concluded about turnout in Wisconsin and the 25 trend in turnout, given that these changes have
1 was not unique. 2 Q Okay. And then, again, we talked about 3 this a little bit. On Page 22 you state, middle 4 paragraph, "In recent elections prior to 2011, 5 Wisconsin was a national leader in the turnout of 6 voters." 7 Is it -- you see that statement? 8 A Yes. 9 Q Is it your expert opinion that Wisconsin 10 is no longer a national leader in the turnout of 11 voters? 12 A We discussed that. I never said that. 13 Q Okay. 14 A I never said that, you know, at the 15 aggregate level Wisconsin is no longer a national 16 leader. 17 But we don't have enough elections to tell 18 yet. You know, the full panoply of laws passed are 19 just now going into effect. We haven't even had a 20 presidential election or a major midterm election 21 with all the laws in effect. 22 So my answer would have to be qualified by 23 the fact that we don't know enough. We haven't had 24 enough experience under these laws to make that 25 judgment.	118 1 occurred recently? 2 A I don't recall specifically. You would 3 have to -- 4 Q Okay. 5 A Because he said a lot of things about 6 turnout. You would have to show me the part of the 7 report, and I'll respond to it. 8 Q Okay. And then talked a little bit 9 earlier about, you know, voter impersonation fraud 10 and voter fraud. Right? We talked a little about 11 that? 12 A Just a little. 13 Q Now we're getting to the part of the 14 report that addresses that. 15 A Yes. 16 Q So I want to bring out another exhibit. 17 So we can set the report to the side for now. 18 A Sure. What page of my report are we 19 dealing with now? 20 Q I think 22 and 23. Maybe not. 21 A No, that doesn't deal with fraud. 22 Q Okay. It's here. It's 23 and 24, top of 23 24 here. You state, "Despite the lack of" -- 24 A Right. But I have a much more extensive 25 discussion of fraud elsewhere in my report, earlier

<p>1 in my report, actually.</p> <p>2 Q We'll set the report aside for now, and I</p> <p>3 have another exhibit.</p> <p>4 A Sure.</p> <p>5 MR. KAWSKI: Please mark that as Exhibit</p> <p>6 2.</p> <p>7 (Lichtman Deposition Exhibit 2 marked for</p> <p>8 identification and is attached to the transcript.)</p> <p>9 Q Take a look at Exhibit 2.</p> <p>10 A Yeah.</p> <p>11 Q Do you recognize what that is?</p> <p>12 A I do.</p> <p>13 Q What is it?</p> <p>14 A It is the -- I believe it's the Supreme</p> <p>15 Court opinion, the 2008 Crawford case involving the</p> <p>16 Indiana voter photo ID law.</p> <p>17 Q You've read it?</p> <p>18 A Yeah. Not recently but I've certainly</p> <p>19 read it.</p> <p>20 Q Do you recall what the Justice Stevens</p> <p>21 opinion said about voter fraud?</p> <p>22 A I think he found that there was no</p> <p>23 extensive evidence of voter fraud.</p> <p>24 Q Could you turn to -- you see there's page</p> <p>25 numbering, Page 195. There is a heading, Voter</p>	<p>1 MR. SPIVA: Objection. Well, okay. I</p> <p>2 mean, if you're just asking him factually whether</p> <p>3 they upheld the law, that's fine. I didn't know if</p> <p>4 you were asking for a legal conclusion.</p> <p>5 MR. KAWSKI: No.</p> <p>6 Q How would you explain that?</p> <p>7 MR. SPIVA: Objection to the extent it</p> <p>8 calls for a legal conclusion.</p> <p>9 A You know, I've answered all of your</p> <p>10 questions. But I now do think you're asking me to</p> <p>11 explicate the legal reasoning of the Supreme Court.</p> <p>12 And I'm going to decline to do that. I'm not a</p> <p>13 lawyer.</p> <p>14 Q I said how would you explain that, not how</p> <p>15 the Supreme Court explained that.</p> <p>16 MR. SPIVA: Objection. Explain what?</p> <p>17 Q How would you explain that, you know, this</p> <p>18 law was deemed valid, but there was no evidence of</p> <p>19 any voter fraud?</p> <p>20 MR. SPIVA: Objection. Calls for a legal</p> <p>21 conclusion.</p> <p>22 A Yeah, I'm -- again, I'm -- if you're</p> <p>23 asking me for my opinion, that's one thing. If</p> <p>24 you're asking me to explain legal reasoning, you</p> <p>25 know, I'm not a lawyer.</p>	<p>123</p> <p>122</p> <p>124</p>
<p>1 Fraud.</p> <p>2 And, again, the page number is --</p> <p>3 A I see pages in the bottom here.</p> <p>4 Q They're kind of interlined into the</p> <p>5 text in bold.</p> <p>6 A If you could maybe direct me to these</p> <p>7 pages in the bottom, it would be easier.</p> <p>8 Q Okay. Page 8 at the bottom.</p> <p>9 A Page 8. Yeah. Voter Fraud. Yeah.</p> <p>10 Q Okay. And do you recall reading this at</p> <p>11 one point?</p> <p>12 A Yes.</p> <p>13 Q Okay. So you see the sentence, second</p> <p>14 sentence of that paragraph under Voter Fraud, "The</p> <p>15 record contains no evidence of any such fraud</p> <p>16 actually occurring in Indiana at any time in its</p> <p>17 history."</p> <p>18 Do you see that sentence?</p> <p>19 A I do.</p> <p>20 Q And is that what you were just referring</p> <p>21 to?</p> <p>22 A Yes.</p> <p>23 Q Yet in this case the Supreme Court upheld</p> <p>24 Indiana's law. Correct?</p> <p>25 A Correct.</p>	<p>1 Q Okay. Let's go to another sentence. Same</p> <p>2 paragraph. "It remains true, however, that flagrant</p> <p>3 examples of such fraud in other parts of the country</p> <p>4 have been documented throughout this nation's</p> <p>5 history by respected historians and journalists."</p> <p>6 Do you see that?</p> <p>7 A I do.</p> <p>8 Q Do you agree that that's an accurate</p> <p>9 recounting of history?</p> <p>10 A Ancient history, maybe. But it's not an</p> <p>11 accurate recounting of recent history. And it would</p> <p>12 be a highly inaccurate recounting of history since</p> <p>13 2008.</p> <p>14 Q Okay.</p> <p>15 A So I would -- I would take a lot of issue</p> <p>16 with that statement as a historian.</p> <p>17 Q What do you mean by "ancient history"?</p> <p>18 A You know, 19th century, early 20th century</p> <p>19 history. But let's say we're looking at the period</p> <p>20 from 2000 onward.</p> <p>21 There is virtually no evidence of voter</p> <p>22 impersonation fraud existing anywhere in America.</p> <p>23 And I cite some of the studies with respect to that,</p> <p>24 both in Wisconsin and nationwide.</p> <p>25 Those studies may not have been available</p>	

<p>1 at the time this decision was rendered. They are 2 available now. And they show a very different 3 conclusion from that which the Supreme Court reached 4 in 2008.</p> <p>5 Q So you think that things have changed and 6 perhaps the Supreme Court's decision is not correct 7 anymore?</p> <p>8 MR. SPIVA: Objection. Calls for a legal 9 conclusion.</p> <p>10 A Yeah, I'm not going to make a legal. But 11 I think substantively the Supreme Court decision is 12 not correct. And remember, they are dependent upon 13 what was presented to them. Justice Stevens is not 14 doing his own independent analysis of voter fraud. 15 And I don't know what was presented to them.</p> <p>16 But based on what I know, taking into 17 account even the last 15 years, which has been 18 extensively studied, there is virtually no evidence 19 whatsoever of voter impersonation fraud.</p> <p>20 Q So same paragraph, last sentence of that 21 paragraph. Do you see where it states, "Not only is 22 the risk of voter fraud real, but that it could 23 affect the outcome of a close election."</p> <p>24 Do you see that?</p> <p>25 A I do.</p>	<p>1 A I said voter fraud involving identity. 2 That is someone impersonating someone else. 3 Q Are you familiar with the case of Robert 4 Monroe from Shorewood in Wisconsin, criminal case? 5 A If -- I believe there has been one -- if 6 you're highlighting the one criminal case in 15 7 years that involved voter impersonation, that's 8 probably it. 9 Q I don't think it involved voter 10 impersonation. 11 A Okay. Then I'm not sure what the case is. 12 Q It involved absentee ballot fraud in 13 multiple voting. 14 A Then I am not familiar with it. 15 Q If you turn to the bottom, Page 9. So 16 next page. Top of the page, left-hand corner. The 17 sentence, "While the most effective method of 18 preventing election fraud may well be debatable, the 19 proprietary of doing so is perfectly clear." 20 Do you see that? 21 A Yes. 22 Q Do you agree with that statement? 23 MR. SPIVA: Objection. Calls for a legal 24 conclusion. 25 A Yeah, as far as -- and I'm not sure what</p>
<p>1 Q Do you agree that the risk of voter fraud 2 is real?</p> <p>3 A Not very real, no. I think on the list of 4 things that I would worry about on elections, 5 particularly impersonation type of voter fraud that 6 involved identity, is virtually nonexistent. 7 And even where close elections have been 8 studied extensively looking for this, they haven't 9 found it.</p> <p>10 Q Do you agree that voter fraud could affect 11 the outcome of a close election?</p> <p>12 A Anything is possible. But I have not seen 13 any evidence, certainly not of in-person 14 impersonation type of voter fraud --</p> <p>15 Q Okay.</p> <p>16 A -- that affected the outcome of a close 17 election.</p> <p>18 And given the virtual nonexistence of 19 voter fraud within the State of Wisconsin, as it 20 relates to identity, a close election is far more 21 likely, far more likely to be affected by 22 restrictions on voting of the kind passed in 23 Wisconsin than voter fraud involving identity.</p> <p>24 Q So when you say "voter fraud," what do you 25 mean by the words "voter fraud"?</p>	<p>126 128</p> <p>1 Q Do you agree that the risk of voter fraud 2 is real?</p> <p>3 A Not very real, no. I think on the list of 4 things that I would worry about on elections, 5 particularly impersonation type of voter fraud that 6 involved identity, is virtually nonexistent. 7 And even where close elections have been 8 studied extensively looking for this, they haven't 9 found it.</p> <p>10 Q Do you agree that voter fraud could affect 11 the outcome of a close election?</p> <p>12 A Anything is possible. But I have not seen 13 any evidence, certainly not of in-person 14 impersonation type of voter fraud --</p> <p>15 Q Okay. Back to your report, Page 24. You 16 talk about how there were some Democrats who joined 17 the Republican majority in voting for Act 23. 18 Do you remember that?</p> <p>19 A Three.</p> <p>20 Q First of all, who are the three, if you</p>

129	131
<p>1 remember?</p> <p>2 A I don't remember. I'm sorry.</p> <p>3 Q Why do you think they did that?</p> <p>4 A I have no idea. It's -- when you're dealing with such a small minority, it's, you know -- you're not dealing with large numbers of legislators acting in a particular way. Who knows, you know, what favors they may have been promised or anything else to do this. I have no -- I'm not saying they were. I'm just saying I have no idea why they did this.</p> <p>12 But, you know, they are the exception to the rule.</p> <p>14 Q Wouldn't it be political suicide?</p> <p>15 A It depends what districts they represent and, you know, as I said, what they were promised and what they were offered. Not necessarily for such a small number.</p> <p>19 Yes, you know, you have to raise some 20 concerns if it was 40 Democrats voting for it. But 21 three is very idiosyncratic.</p> <p>22 Q What does that tell you about the intent 23 of the legislature?</p> <p>24 A I don't think it tells me much of anything.</p>	<p>1 A Yes.</p> <p>2 Q Third paragraph, you talk about strict 3 photo identification states like Wisconsin.</p> <p>4 A Yes.</p> <p>5 Q And then you go on to discuss provisional 6 ballots and how that alternative works. Correct?</p> <p>7 MR. SPIVA: Are you talking about 26 on 8 the report or 26 on the -- you know, there's, like, 9 an ECF page number at the top.</p> <p>10 A Yeah, I don't see --</p> <p>11 Q Twenty-six at the bottom of the page.</p> <p>12 A Oh, okay.</p> <p>13 Q Yeah.</p> <p>14 A Yes, I see it now.</p> <p>15 Q So is it the provisional ballot aspect 16 that makes the law, in your mind, strict?</p> <p>17 A Well, you can phrase it that way. I prefer to phrase it a little more broadly. That is, the law is strict in that if you don't have an acceptable ID, you have to take additional action to enable your vote to count. You can't correct the action right there at the polls.</p> <p>22 So in the case of Wisconsin, you've got to either get an ID or fetch an ID and come back by, I think it's 8 o'clock on election day or 4 p.m. on</p>
130	132
<p>1 Q No?</p> <p>2 A Except for the fact that overwhelmingly these bills were passed along partisan lines, with a very minor exception.</p> <p>5 Q Could it be said they were passed with 6 bipartisan support?</p> <p>7 A I don't think so. I don't think three cross-over votes in the entire legislature indicates bipartisan support.</p> <p>10 Q Is there some threshold that would 11 indicate bipartisan support?</p> <p>12 A Not necessarily. But it would have to be more than token.</p> <p>14 Q Okay.</p> <p>15 A It would have to be something, more substantial proportion. Certainly if it was majority support or near majority support, you would say, yes, this is bipartisan legislation.</p> <p>19 Q Okay.</p> <p>20 MR. SPIVA: If you're going to switch 21 gears, it might be a good place to stop.</p> <p>22 MR. KAWSKI: Yes. Let's stop. 23 (A recess was taken.)</p> <p>24 BY MR. KAWSKI:</p> <p>25 Q Looking at your report on Page 26.</p>	<p>1 Friday.</p> <p>2 Q So would you only characterize voter photo 3 ID laws as nonstrict if they have some kind of, like 4 you say, at the polling place on election day 5 alternative?</p> <p>6 A Yes. And there are many -- you know, lots of different kinds of alternatives.</p> <p>8 Q Okay. Pages 27 and 28, you look at data 9 from a survey of performance of American elections 10 from 2008.</p> <p>11 A I think it's 28 and 29, actually, I have the table on that.</p> <p>13 Q Actually, I'm looking at, again, the 14 bottom of the pages.</p> <p>15 A Oh, I'm sorry.</p> <p>16 Q Twenty-seven and 28.</p> <p>17 A Yes, I reference it there, but the tables are a little later.</p> <p>19 Q Is there any evidence that you've seen 20 that this survey was placed before the Wisconsin 21 legislature as something they were made aware of?</p> <p>22 A I can't say that this survey particularly was placed. Although it may have been mentioned in some of the material that was placed before them.</p> <p>24 I know that there was lots of information</p>

133	1 placed before them. Some of it by a group of 2 professors who sent them a letter, other 3 information, probably more of an anecdotal rather 4 than statistical, was presented by African-American 5 legislators. 6 I don't recall if the letter actually 7 referenced this survey. It may well have. 8 Q Okay. And so in terms of the analysis 9 that you've done in this case, a 2008 survey is 10 still relevant? 11 A It's extremely relevant. Because I'm 12 talking about intent. And this is something that 13 was readily available and consistent with other 14 findings at the time they adopted Act 23 in 2011. 15 Q Okay. And I guess what I mean by that is, 16 three years passed between the time of the survey 17 and 2011, that doesn't change the analysis for you? 18 A Well, that was the last presidential 19 election. So it was the last biggest sample that we 20 had for this information. 21 Plus, it doesn't get released instantly. 22 You're talking about some time in 2009. 23 Q Okay. On Page 29 at the bottom, then. 24 Table 11 talks about passport possession rates? 25 A Yes.
134	136 1 Q And again it's referencing the same 2008 2 survey? 3 A Yes. 4 Q You have not in your expert analysis 5 studied the possession of passports and who 6 possesses them in Wisconsin in 2016; have you? 7 A No. 8 Q Okay. Do you know if anyone has? 9 A I'm not aware. And I haven't looked for 10 it, so I can't say. 11 Q Okay. But would you agree that the 12 possession rates probably should be similar to what 13 is in Table 11? 14 A You're asking me for speculation. I will 15 speculate. I'm not sure the levels will be the 16 same, but there's a pretty good chance that the 17 disparities would still exist and still be at least 18 somewhat similar. 19 Q Okay. Top of Page 30. 20 A Yes. 21 Q You make a statement, "African-Americans 22 and Hispanics were substantially more likely to be 23 deterred from voting because they lacked the 24 requisite identification." 25 And that statement, is that based on the

<p>1 A I believe that's right.</p> <p>2 Q Are you familiar with those surveys?</p> <p>3 A I am.</p> <p>4 Q And you see in the third -- or in the</p> <p>5 second full paragraph, the author concludes that</p> <p>6 these surveys stated that this is an exceptionally</p> <p>7 low rate of denial of access to the vote.</p> <p>8 Do you see that?</p> <p>9 A I do.</p> <p>10 Q How do you respond to these surveys?</p> <p>11 A They were very limited surveys.</p> <p>12 My recollection -- and we can delve</p> <p>13 through the article to make sure my recollection is</p> <p>14 correct -- is they did a general election in 2006</p> <p>15 and then only a primary election in 2008. And in</p> <p>16 2006, of course, I believe it was only one state</p> <p>17 that had a -- I think it was either Indiana -- I</p> <p>18 think it was Indiana. But there was only one state</p> <p>19 that had a strict voter photo ID law. There was</p> <p>20 more states in 2008. And we're dealing with a</p> <p>21 presidential election with a vastly higher turnout</p> <p>22 than primary elections.</p> <p>23 So I think the more updated but still</p> <p>24 available survey from 2008 is much more reliable</p> <p>25 than anything they have concluded here because they</p>	<p>1 that actually have strict voter photo IDs. Of</p> <p>2 course, with only one state operable, you're going</p> <p>3 to find very low levels of those deterred from</p> <p>4 voting by photo ID.</p> <p>5 But as more states adopt laws, you have</p> <p>6 more people indicating that they were deterred in</p> <p>7 this fashion. And moreover, even the most recent</p> <p>8 studies, which include many more states -- this is</p> <p>9 only a minority of states. I think there were only</p> <p>10 nine states.</p> <p>11 So there is very little you can conclude</p> <p>12 overall about the effects of voter photo ID from</p> <p>13 this evidence from way back then. And the more</p> <p>14 recent evidence shows much greater effects.</p> <p>15 Q What -- specifically what surveys are you</p> <p>16 talking about?</p> <p>17 A The survey of the performance of American</p> <p>18 elections and the Cooperative Congressional Election</p> <p>19 Study.</p> <p>20 Q And you said that cooperative</p> <p>21 collection --</p> <p>22 A Cooperative -- I believe that's one of the</p> <p>23 ones he cites here. Cooperative Congressional</p> <p>24 Election Survey.</p> <p>25 Q And so you're saying what year of that</p>
<p>1 were not the best elections to look at and there was</p> <p>2 minimal strict voter photo ID laws in effect at this</p> <p>3 time.</p> <p>4 Q And so the author Stephen Ansolabehere.</p> <p>5 Are you familiar with his work?</p> <p>6 A I am.</p> <p>7 Q Do you know him?</p> <p>8 A In passing.</p> <p>9 Q Is he a respected scholar in this area of</p> <p>10 election?</p> <p>11 A Yeah. I'm not attacking Ansolabehere</p> <p>12 here. I'm just saying the limitations of the</p> <p>13 survey.</p> <p>14 Q Do you disagree with the conclusions he is</p> <p>15 making about voter ID presenting an insignificant</p> <p>16 barrier to voting?</p> <p>17 A I do.</p> <p>18 Q Okay.</p> <p>19 A I think more updated evidence shows it's</p> <p>20 not.</p> <p>21 Q What more updated evidence is available?</p> <p>22 A There is a wealth of more updated evidence</p> <p>23 available. Not only do we have the 2008 survey, we</p> <p>24 have subsequent surveys which are much more reliable</p> <p>25 because they include much greater number of states</p>	<p>1 survey would show different results?</p> <p>2 A 2008 onward. We already have different</p> <p>3 results being shown in my table in the performance</p> <p>4 of American elections, even though a relatively</p> <p>5 small number of states, even in 2008, had strict</p> <p>6 voter photo identifications.</p> <p>7 Later studies show, in fact, that you</p> <p>8 could attribute a lack of voting on the part</p> <p>9 nationwide of millions of registered voters as a</p> <p>10 result of voter photo ID laws.</p> <p>11 Q You said there is a more recent CCES?</p> <p>12 A Yes.</p> <p>13 Q That concludes otherwise?</p> <p>14 A Yes.</p> <p>15 Q Where is it cited --</p> <p>16 A All of the CCES and SPAE, are, as I told</p> <p>17 you, conducted every two years.</p> <p>18 Q Okay. And so you're saying that there's</p> <p>19 an SPAE that's more recent than 2008?</p> <p>20 A Yes.</p> <p>21 Q There is. So where is it cited in your</p> <p>22 report?</p> <p>23 A Well, I cited the 2008 because that was</p> <p>24 available at the time they made their decisions.</p> <p>25 You asked me then the question about</p>

<p style="text-align: right;">141</p> <p>1 subsequent SPAEs, which would not have been 2 available at the time they made their decision on 3 voter photo ID. And they show very substantial 4 deterrent rates as a result of voter photo ID as 5 more states adopt the strict form.</p> <p>6 Q Okay. And so going back to Page 129, 7 then, the third full paragraph. 8 Do you see where it states, "Of the 1,113 9 nonvoters in the survey, four cited this reason" --</p> <p>10 A I'm sorry, where are we?</p> <p>11 Q Third full paragraph.</p> <p>12 A One rejoined to these findings? Is that the one?</p> <p>13 Q Yes, that paragraph.</p> <p>14 A Okay.</p> <p>15 Q So it states, "Of the 1,113 nonvoters in 16 the survey, four cited this as a reason." And I 17 think it's referring to, "I did not have proper 18 identification," as a reason for not voting. 19 20 "And these individuals cited other reasons 21 as well, bad weather and forgot to vote. All told, 22 then, only seven out of 4,000 people, less than two 23 tenths of one percent of the electorate, could be 24 considered nonvoters at least in part because of 25 voter identification."</p>	<p style="text-align: right;">143</p> <p>1 maybe two states that had them in effect when these 2 studies were operable.</p> <p>3 Q Is it your understanding that he was 4 focussing on only strict variance of the voter photo 5 ID law?</p> <p>6 A You're missing my point. He wasn't 7 focused on any particular state. He was saying of 8 the entire universe of voters from all 50 states, 9 what percentage cited a lack of appropriate ID.</p> <p>10 And my point is, by its definition that 11 percentage is going to be very small because the 12 denominator includes the vast majority of voters who 13 are not in states with strict voter ID. A tiny 14 percentage of voters are in states with strict photo 15 voter IDs. So, not surprisingly, you're going to 16 find only a tiny percentage of voters cited that as 17 a reason for not voting.</p> <p>18 Q Page 130, do you see there's the heading 19 Discussion?</p> <p>20 A I do.</p> <p>21 Q The author states, "The experience of 22 individuals at the polls on election day suggest 23 that there is much less to the voter identification 24 controversy than appears in the pages of the court 25 decisions of the debates and public forums."</p>
<p style="text-align: right;">142</p> <p>1 Do you see all that?</p> <p>2 A Of course.</p> <p>3 Q How do you respond to that?</p> <p>4 A I think I already have. You're dealing 5 with one state, maybe two --</p> <p>6 Q Okay.</p> <p>7 A -- out of the 50 states.</p> <p>8 And it's not a big population state.</p> <p>9 So if your denominator is all the voters, 10 you're not going to expect anybody, tiny percentage 11 to be affected by voter photo ID, because only a 12 tiny percentage of voters are even covered by voter 13 photo ID.</p> <p>14 And as I said, these are not the best 15 elections to look at. It's what -- it's what he had 16 available to him at the time that he was doing this 17 study.</p> <p>18 We have much better evidence later on 19 which shows much bigger effects.</p> <p>20 Q Okay. And your understanding, then, is 21 that the 2006 and 2008 studies referenced by 22 Dr. Ansolabehere in this article focused only on 23 Indiana?</p> <p>24 A They can only focus on states that had 25 strict voter photo ID laws. And there were one,</p>	<p style="text-align: right;">144</p> <p>1 Do you see that sentence?</p> <p>2 A I do.</p> <p>3 Q It's true that you disagree with that, 4 that you think there is more to it than this author 5 is saying?</p> <p>6 A Well, this author -- what he says is 7 obsolete. It's just not up to date in terms of a 8 totally different universe with respect to voter 9 photo ID laws after this study was taken.</p> <p>10 And if you go on a little further, it 11 says, "A majority of Americans say that voter fraud 12 is common, but voter identification laws and 13 practices has little effect on those beliefs."</p> <p>14 So it's also saying the justification for 15 these laws, based on what he saw at the time, had no 16 basis.</p> <p>17 Q And so I'm seeing a little bit of a -- I 18 don't know how to characterize it. But you relied 19 on a 2008 survey in your work in this case.</p> <p>20 Correct?</p> <p>21 A Because that was what was available to the 22 legislature at the time.</p> <p>23 I have also, as I have testified, looked 24 at more recent studies which show even greater 25 effects of photo voter ID.</p>

1 Q But those studies you did not talk about 2 in your expert work in this case. 3 A I've talked about them in response to your 4 questions. But I put the 2008 study, which shows 5 significant effects, because that was available when 6 the legislature made its 2011 decisions, plus lots 7 of information was directly presented to them saying 8 the same thing as what this study indicates. 9 Q Is it fair to say you will not be in this 10 case relying on any survey of the performance of 11 American elections after the 2008 survey? 12 A That's not fair. You brought it up. It's 13 become an issue in the case. Not necessarily for 14 what happened in 2011, but for the consequences, if 15 that becomes an issue in the case, I may well be, 16 since you asked me about it, talking about 17 subsequent surveys. 18 Q I guess how would it be relevant, though, 19 to your analysis of the intent of the legislature to 20 look at subsequent surveys? 21 A It wouldn't be relevant, in my mind. But 22 your experts have looked at things subsequent to the 23 adoption of the law. And you raised this survey as 24 kind of presenting evidence that voter photo ID is 25 not a problem.	145 1 be of putting one into place, which they did in 2 2011. 3 Q Are you aware of any Wisconsin-specific 4 survey that touches upon this topic of deterrence of 5 minorities from voting due to a voter photo ID law? 6 A You mean subsequent to the adoption of the 7 voter photo ID law in Wisconsin? 8 Q Yes. 9 A I believe it's only been used in a couple 10 of elections. One was an off year, and one was a 11 primary. And I don't believe any of these surveys 12 studied the Wisconsin 2015 election or the Wisconsin 13 2016 primary. 14 So at this point I'm not aware of any 15 studies that look at the deterrence effect in those 16 two elections. 17 But we do know for certain that there was 18 some voters disenfranchised in those elections by 19 the voter photo ID law specifically. We don't know 20 the number because all the information is not 21 available. But we know there were some. 22 Q Skipping ahead to Page 34 of the report. 23 The first full paragraph on that page states, "It is 24 telling that Wisconsin only provided a mechanism by 25 which voters can obtain a, quote/unquote, free ID in
146 1 So if that becomes an issue, and it then 2 becomes relevant for me to present some of the 3 testimony we've talked about this afternoon -- I'm 4 not saying I will, but I'm not saying I won't. 5 Q Okay. All right. We can set that one, 6 Exhibit 3, to the side. 7 All right. So Table 12 again on Page 30 8 of your report, did that survey study Wisconsin at 9 all? 10 A It did. 11 Q It did? 12 A Of course. 13 Q Okay. How could it, though, when 14 Wisconsin had not passed -- implemented a voter ID 15 lawyer? 16 A These are -- this is like this study. 17 These are nationwide results. They are not limited 18 to only those states that had strict voter photo ID 19 laws. 20 Q So you're drawing -- your opinion is drawn 21 from not Wisconsin-specific survey but a nationwide 22 survey. 23 A It can't be, since at that time Wisconsin 24 did not have a voter photo ID law in place. 25 But this shows what the consequences would	148 1 2014 after being forced to do so by Wisconsin 2 Supreme Court decision that made no-cost 3 documentation a condition of the implementation of 4 the voter photo ID law." 5 Do you see that sentence? 6 A Yes. 7 Q Is that factually accurate that -- 8 A I believe it is. I believe until the 9 Wisconsin Supreme Court decision, they did not have 10 in place the same petition process. And I haven't 11 seen anything, any files on the petition process, 12 prior to that decision. 13 Q Okay. So it's your position that from 14 July -- from 2011, mid 2011, I believe it's July, up 15 until 2014, there was no free ID program in 16 Wisconsin? 17 A I didn't say that. 18 Q Okay. 19 A That's why I put free -- 20 Q In quotes? 21 A -- in quotes. 22 Because the idea itself didn't necessarily 23 cost you. You couldn't charge for the ID. I mean, 24 you know, as we discussed. That would have been, 25 you know, a red-flag signal on this law.

1 But, underlying documents cost. And 2 that's what -- why you have this petition process. 3 Q Okay. So the quotation marks around the 4 word "free" are very important to your analysis? 5 A Yes. I even say, no-cost documentation. 6 I don't say no-cost IDs. 7 Q Okay. 8 Page 35, you talk about a FoodShare bill? 9 A Yes. 10 Q What does this have to do with anything? 11 A I think it is essential to the whole issue 12 here. I mean, it goes right to the heart of intent. 13 Q Okay. 14 A If, in fact, the intent had nothing to do 15 with race but had to do with increasing confidence 16 in the elections, deterring voter fraud, there would 17 have been absolutely no reason not to allow a photo 18 ID for the FoodShare program to count for voting. 19 Not only didn't they authorize this, but 20 the Republicans in the legislature explicitly 21 rejected an amendment to authorize, under this law 22 that they were working on, photo IDs for food stamps 23 for voting. 24 I cannot think of an explanation for that, 25 other than the fact that the FoodShare program is	149	1 A It doesn't matter to my analysis. What 2 matters to my analysis is while they were 3 considering it and while it still could have passed, 4 they rejected the idea that if we establish this, 5 you can use it for voting. 6 Q So you -- 7 A They may have rejected it for entirely 8 other reasons, but that's irrelevant to how this 9 bears upon my intent analysis. 10 Q So it's your position that a bill that the 11 legislature failed to enact in 2015 bears upon 12 whether the legislature intentionally discriminated 13 on the basis of race in 2011? 14 A Absolutely. Because it goes to the heart 15 of the issue. Are you really concerned with voter 16 fraud or confidence, or are you really concerned 17 with a law that has a particularized impact on 18 limiting minority and voter opportunity -- minority 19 voter opportunities? 20 If your only concern was voter confidence 21 and fraud, then certainly you would have allowed, if 22 you established it, food stamp photo IDs to be used 23 for voting. 24 Q Isn't that quite attenuated? 25 A I think it's direct, right on point. I	151
150	1 overwhelmingly minority. As I point out on Table 2 36. You've got non-Hispanic blacks, 365 percent 3 higher than non-Hispanic whites in participation in 4 food aid. Hispanics 241 percent higher. 5 It certainly can't be justified by a lack 6 of security of these IDs. You've got to go 7 through -- you know, you're giving them money, in 8 effect. You have to go through an incredibly 9 exacting process to get one of these IDs, including 10 income statements, expense statements. You actually 11 have to have an interview. You actually have to 12 sign up for an employment program. 13 So it seems to me not just not including 14 this but rejecting it is a clear indication of the 15 racial intent behind the law. Because whether or 16 not you actually saw these statistics, it's 17 certainly common knowledge that minorities are 18 poorer than whites and minorities are greater 19 recipients of welfare. 20 In fact, that's a common argument you hear 21 made all the time. 22 Q But the legislature didn't pass the 23 FoodShare photo ID bill. 24 A It doesn't matter. 25 Q It doesn't?	1 don't see how -- it would be hard to devise a more 2 on-point test. We have this totally secure ID, far 3 more secure than other IDs that you've authorized 4 for voting and, yet, you reject the idea that this 5 can be used for voting. 6 And, oh, by the way, blacks are almost 7 five times more likely to have such IDs, and 8 Hispanics are almost four times more likely to have 9 such IDs. 10 Unless, again, you're thinking the 11 legislature is living on the moon, they know this. 12 Q You agree the legislature did not pass 13 this FoodShare law? 14 A Understood. I'm not trying to analyze the 15 FoodShare bill as a FoodShare bill. I am analyzing 16 the FoodShare bill for the insight that it provides 17 on the decision-making of the legislature regarding 18 photo voter ID. 19 Q Page 38 at the very top. 20 A Sure. 21 Q Talks about the exclusion of 22 post-secondary technical schools? 23 A Yes. 24 Q And you now know that by administrative 25 rule, that is a permissible ID?	152

<p>1 A I do. And I commented on that in my 2 rebuttal report.</p> <p>3 Q Okay. And so do you agree, then, that 4 African-Americans and Hispanics who you believe are 5 more likely to be at those institutions now have yet 6 another alternative for ID?</p> <p>7 A For a limited number. But it's not 8 because of anything from the legislature did. The 9 legislature didn't decide, Oh, my gosh, we made a 10 mistake here. As you said, it was something that 11 came out of the GAB, not the legislature.</p> <p>12 So, again, what we see here is a common 13 pattern of action, fairly obvious action, to 14 ameliorate the effects on minorities coming from 15 something external to the legislature in three 16 specific examples that we have now seen.</p> <p>17 Q The legislature has the ability to stop 18 rule-making that it believes is inconsistent with 19 the law. Correct?</p> <p>20 A I would imagine if -- by a vote of the 21 legislature they could have done that.</p> <p>22 Q But they didn't stop the technical college rule?</p> <p>24 A I think that would have, you know, greatly 25 enhanced the notion that they were intentionally</p>	<p>153</p> <p>1 this section of the report, any one can be analyzed 2 to have a racially discriminatory impact?</p> <p>3 A I believe I analyze if not every single 4 one, certainly virtually every single one. But in 5 doing an intent analysis, you don't only analyze 6 them individually. Because their impact is not only 7 felt individually; their impact is felt 8 collectively.</p> <p>9 That is, voters have to face all the 10 rules, not just one.</p> <p>11 Q So in doing legislative intent analysis, 12 is it commonplace to look at the motivations for 13 bills that were passed by different legislatures, 14 different members of the legislature?</p> <p>15 A Absolutely. Because we're talking about 16 the same political party passing these bills.</p> <p>17 In other words, remember the rationale 18 here is, by limiting the votes of African-Americans 19 and Hispanics, for all the reasons we've laid out, 20 you're deriving political benefits to Republicans. 21 And it's not like it was a Republican legislature 22 that passed one and then a Democratic legislature 23 that passed another. These were all passed by 24 Republican legislatures and signed by a Republican 25 governor.</p>
<p>154</p> <p>1 discriminating. If they had done something that 2 blatant, overturned a rule that helped 3 African-Americans and Hispanics for no good reason, 4 I think they would have put themselves in a lot of 5 jeopardy.</p> <p>6 Q Page 39, first full paragraph.</p> <p>7 A Yes. Okay.</p> <p>8 Q In this section you've gone through 9 several different changes in the law. And in this 10 sentence, first full paragraph, you say, "Taken 11 together, these many restrictions on options to 12 register to vote impose disproportionate burdens on 13 African-Americans and Hispanics."</p> <p>14 Do you see that?</p> <p>15 A Of course.</p> <p>16 Q Is it your opinion that to have the 17 discriminatory effect that you believe existed, that 18 the laws must be considered together, or can they be 19 considered separately from each other?</p> <p>20 A Either way.</p> <p>21 Q Okay.</p> <p>22 A You can do it both ways. And I do it both 23 ways.</p> <p>24 Q Okay. So it's your opinion then that any 25 one of these particular acts that you outlined in</p>	<p>156</p> <p>1 Q And so legislative intent focuses more on 2 parties than individual legislators?</p> <p>3 A Not so.</p> <p>4 Q No?</p> <p>5 A In this case, it focuses on party. It 6 could focus on all kinds of different things. But 7 in this case, we've got to look for a motive as to 8 why you're getting bill after bill after bill after 9 bill that poses a disparate burden on minorities. 10 And in this case, the motivation, for all the 11 reasons I've laid out, is the direct link between 12 partisan advantage and discriminatory legislation 13 with respect to minorities.</p> <p>14 And we also, as we have gone over, have 15 direct evidence of that.</p> <p>16 Q Is that consistent with the Arlington 17 Heights framework?</p> <p>18 A Absolutely consistent with the Arlington 19 Heights framework. It asks you to look at sequence 20 of events. It asks you to look at contemporary 21 statements. Of course it is very much consistent 22 with the Arlington Heights.</p> <p>23 Q It's not too much cobbling together?</p> <p>24 A No. I don't think you're cobbling 25 together at all. Because you've got these common --</p>

1 many common threads that we've talked about. 2 Q Page 39 you discuss the corroboration 3 option that was -- no longer exists. Correct? 4 A That's right. 5 Q So this, the last paragraph on Page 39, is 6 this really all the analysis you're doing with 7 regard to corroboration, or is there more analysis? 8 A I don't know of any more, and I don't see 9 anything from your experts that I had to respond to 10 on this. 11 Q Okay. So there's no other evidence you're 12 relying upon as to corroboration, other than this 13 single paragraph, what's stated there on Page -- 14 A I am not aware of any other evidence, as I 15 said, I didn't see anything from your experts that I 16 needed to respond to. So unless something new comes 17 across, and as I said we're getting new things all 18 the time, this is what I have. 19 Q So in this paragraph on Page 39, you say, 20 "According to internal GAB e-mails, a total of 21 35,332 Wisconsin citizens had registered through 22 corroboration from 2006 through October 2012." 23 Do you see that? 24 A I do. 25 Q Do you know what the total number of	157 1 of how many African-Americans use the corroboration 2 option. Correct? 3 A I think I say that right in the paragraph. 4 Q Okay. Page 40. You discuss the 5 elimination of the requirement of special 6 registration deputies at high schools? 7 A Yes. 8 Q And did you have any data that show how 9 many African-American or Hispanic voters use an SRD 10 at a public high school? 11 A We don't know, because you don't register 12 by race in Wisconsin. So, again, which is perfectly 13 acceptable practice, you've got to do some 14 inferring. And we can see African-Americans are 15 overrepresented among public high school students. 16 Q But we don't know if they were more likely 17 to use that option to register. Correct? 18 A Well, more of them would have had that 19 option available relative to whites. But because we 20 don't have registration by race, we don't have the 21 final statistics on that, that's correct. 22 Q Okay. Page 41, there is a -- the first 23 paragraph you state, "In addition, restrictions on 24 registration by college and university students have 25 a specific disparate impact on potential
1 citizens who had registered in that same period is? 2 A Oh, it's much, much larger. 3 Q Are we talking millions? 4 A Could well be. 5 Q Okay. But you don't know? 6 A I don't have the number right off the top 7 of my head, no. But it's much larger than this. 8 Q Did you look at the number? 9 A No. Because my concern here was not to 10 establish this as a percentage. Because I don't 11 believe you need to have some percentage threshold 12 for a law to have a discriminatory effect. 13 As Justice Easterbrook said, voting is 14 personal. And even if it has an effect on a very 15 small number of Wisconsin citizens, it still impacts 16 the right to vote. 17 And so my concern was just to document the 18 number, not necessarily the percentage. And I 19 certainly recognize that's a very small percentage, 20 but it's a lot of people. 21 Q So of that 35,332, how many were white? 22 A I think I said statistics are not 23 available by race. So we had to do some inferring 24 from socio-economic standing. 25 Q Okay. So you don't have direct evidence	158 1 African-American voters." 2 Do you see that? 3 A Yeah. 4 Q You did not have data with regard to what 5 African-American voters were impacted by these 6 changes? 7 A You can't, because we don't know -- we 8 don't have registration by race. Again, we've got 9 to look at the populations directly affected. And I 10 I think you see a pattern here. 11 Q Right. I mean, I'm going to keep asking 12 the questions. But -- 13 A Right. And I'll give you the same answer. 14 We don't have registration by race in Wisconsin, 15 like we did in North Carolina. 16 Q Wouldn't that be the best evidence of 17 these racial impacts? 18 A That would. But it doesn't mean that this 19 evidence isn't good evidence, particularly when the 20 pattern is so common. 21 You know, if you cut into a pie five times 22 or six times and you find it's cherry every time, 23 you might think, yeah, I'm dealing with a cherry pie 24 here. 25 Q Are we cutting into the same pie each time

<p>1 here?</p> <p>2 A Yeah. You're cutting into the pie of</p> <p>3 potential registrants.</p> <p>4 Q Okay. Second paragraph on Page 41.</p> <p>5 You're talking about the abrogation of a Madison</p> <p>6 ordinance?</p> <p>7 A Correct.</p> <p>8 Q Is this the only analysis of that law</p> <p>9 change that you've done for this case?</p> <p>10 A Yes. Because, again, I don't have</p> <p>11 registration on race. But again we see the same</p> <p>12 pattern. You're targeting a group that is very</p> <p>13 disproportionately minority.</p> <p>14 Q Let's flip to Page 46. And here you talk</p> <p>15 about the change from a ten-day durational residency</p> <p>16 requirement to a 28-day.</p> <p>17 A Right.</p> <p>18 Q Do you know what the requirement is here</p> <p>19 in Maryland where you vote?</p> <p>20 A I don't. I haven't registered in Maryland</p> <p>21 since the '70s.</p> <p>22 Q Okay. All right. Why do we have</p> <p>23 durational residency requirements at all?</p> <p>24 A Well, I know what some of the</p> <p>25 justifications for durational residency requirements</p>	<p>161</p> <p>1 A Right.</p> <p>2 Q This -- on Page 47, is this the only</p> <p>3 opinion you intend to offer in this case regarding</p> <p>4 that challenge?</p> <p>5 A Unless I have to respond to something</p> <p>6 presented by the state, that's correct. Again, we</p> <p>7 don't have voting by race.</p> <p>8 Q Okay. So the next section of your report</p> <p>9 talks about procedural and substantive deviations.</p> <p>10 Correct?</p> <p>11 A That's right.</p> <p>12 Q Tell me, what are procedural deviations</p> <p>13 and what are substantive deviations?</p> <p>14 A Procedural have to do with the mechanisms</p> <p>15 and manner by which a law is passed. Substantive</p> <p>16 have to do with the changes from the status quo that</p> <p>17 the law represents.</p> <p>18 Q You concluded that procedural deviations</p> <p>19 did occur in the passage of these challenge laws.</p> <p>20 Correct?</p> <p>21 A Right. But that was not my main point,</p> <p>22 obviously. Since the Republicans controlled the</p> <p>23 matter and could get what they want.</p> <p>24 Q So you have -- by number you come up --</p> <p>25 you go through a number of what you perceive as</p>
<p>162</p> <p>1 are. I'm not sure I necessarily agree with them or</p> <p>2 find them necessary. Particularly in a state that</p> <p>3 has, you know, same day.</p> <p>4 Q So what are the justifications that you</p> <p>5 know?</p> <p>6 A Administrative convenience, to give the</p> <p>7 administrators more time to process whatever it</p> <p>8 needs to be processed. But, obviously, you've got</p> <p>9 good processing in a state with same-day</p> <p>10 registration.</p> <p>11 Maybe to establish a certain degree of</p> <p>12 attachment to the state before having an opportunity</p> <p>13 to vote. Those are some of the justifications I've</p> <p>14 heard.</p> <p>15 Q And then this Page 46, is this the only</p> <p>16 place in any of your reports that you've analyzed</p> <p>17 this durational residency requirement?</p> <p>18 A I believe that's right.</p> <p>19 Q Okay. And do you intend to offer any</p> <p>20 further expert opinions on that requirement?</p> <p>21 A Only if it's brought up by the state.</p> <p>22 Q Okay. Page 47, at the top you talk about</p> <p>23 fixing absentee ballot mistakes?</p> <p>24 A Right.</p> <p>25 Q And Act 227?</p>	<p>164</p> <p>1 procedural deviations.</p> <p>2 A Procedural and substantive.</p> <p>3 Q And substantive. The first of which is</p> <p>4 that Republicans in the legislature introduced</p> <p>5 legislation late in sessions with little time for</p> <p>6 debate, discussion, and analysis. Correct?</p> <p>7 A Yes.</p> <p>8 Q Is that a procedural or a substantive</p> <p>9 deviation?</p> <p>10 A I think it's a little bit of both.</p> <p>11 Q Okay. Could you explain?</p> <p>12 A Yeah. It is procedural in the sense that</p> <p>13 while it is not a violation of rules, it does have</p> <p>14 an impact procedurally to do that in terms of what</p> <p>15 you can go through.</p> <p>16 And it's definitely substantive, because</p> <p>17 as the Republican says, it doesn't give people time</p> <p>18 to comment. It doesn't give you time to adequately</p> <p>19 examine the implications. It's the kind of thing</p> <p>20 you do when you want to rush something through with</p> <p>21 limited scrutiny.</p> <p>22 Q So in the Arlington Heights analysis,</p> <p>23 introducing legislation late is considered a</p> <p>24 procedural or substantive deviation?</p> <p>25 A I think so. Particularly when it involves</p>

165	167
<p>1 the fundamental right to vote. Of all things that 2 ought to be very, very seriously considered, that 3 ought to be weighed with great seriousness, is the 4 fundamental right to vote. And I've seen commentary 5 on that from legislators in other states talking 6 about the extended process that they felt was 7 necessary to go through before you change things 8 implicating the right to vote.</p> <p>9 This is not laws on the color of the paint 10 of state house offices. This involves what the 11 Supreme Court has said is the foundational right of 12 Americans.</p> <p>13 Q Then the second procedural or substantive 14 deviation that you highlight is the magnitude of 15 measures that were passed?</p> <p>16 A That's correct.</p> <p>17 Q So why would the number of laws that were 18 passed show a procedural substantive deviation?</p> <p>19 A Well, again, it's not illegal to pass such 20 measures. But the fact that this makes Wisconsin 21 such an outlier, it's very unusual. It's 22 devotional, if that's a word, to in such a brief 23 period of time adopt so many measures directly 24 implicating the right to vote. You know, even more 25 so than North Carolina, which had been under the</p>	<p>1 before. 2 Q Grothman? 3 A And he's not a legislator, but a staffer. 4 Q Okay. So those are the three, Schultz, 5 Grothman, Aulbaugh?</p> <p>6 A From within Wisconsin. We talked about 7 other nationally -- national figures making similar 8 statements.</p> <p>9 Q No other Wisconsin?</p> <p>10 A Not that I am aware of at this time. But 11 as I said, this has been an incredible moving 12 target.</p> <p>13 Q Okay. On Page 53, you talk about examples 14 that are commonly raised for use of an ID card. 15 Correct?</p> <p>16 A Yes. 17 Q One of which is getting married? 18 A Yes. 19 Q And you state, "Although county practices 20 may vary under Wisconsin state law, birth 21 certificate but not a photo ID is required for 22 obtaining a marriage license." 23 Do you see that? 24 A Correct. 25 Q Are you aware of any jurisdictions in</p>
166	168
<p>1 microscope for doing what they did. 2 And, obviously, as we talked about, it is 3 substantive. Because these are cumulative.</p> <p>4 Q And then the third procedural or 5 substantive deviation you highlight is that 6 Republicans gained unified control of state 7 government in 2010?</p> <p>8 A Right. 9 Q How would that be considered a deviation 10 of any sort?</p> <p>11 A Well, it is a deviation from the past 12 politics of the state.</p> <p>13 Again, I'm not saying it's illegal or 14 anything like that. But it's important because it 15 helps explain the timing of these laws.</p> <p>16 Q We are now going to move to Page 51 that 17 we talked about, the Dale Schultz quote --</p> <p>18 A Yes. 19 Q -- earlier. 20 A Yes, we have.</p> <p>21 Q Do you have -- are there statements by any 22 other Wisconsin Republican legislator that you're 23 relying upon to show contemporaneous viewpoints of 24 decision-makers?</p> <p>25 A Yes. Grothman. We've talked about that</p>	<p>1 Wisconsin that do require a photo ID card to get a 2 marriage license? 3 A I think there might be some. But, you 4 know, I haven't combed through every single 5 jurisdiction. But I wouldn't be surprised that 6 there was.</p> <p>7 Q Let show you -- 8 A -- let me finish. That's why I said 9 county practices vary.</p> <p>10 MR. KAWSKI: Here's another exhibit. 11 (Lichtman Deposition Exhibit 4 marked for 12 identification and is attached to the transcript.) 13 Q So this is Exhibit 4. Take a look at it, 14 let me know if you've seen it before. 15 A I might have. As I said, I looked at some 16 of these counties, but I wasn't going to go through 17 72 counties in Wisconsin and try to parse out all of 18 their laws. Because my basic point was we're 19 talking about state law, and state law does not 20 require it.</p> <p>21 Q So this is, I will represent to you, a 22 printout from the Milwaukee County website. If you 23 go to Page 3, there is a heading Marriage License 24 Application Requirements. 25 Do you see that?</p>

169	171
<p>1 A Yes.</p> <p>2 Q And then second bullet point below that</p> <p>3 heading, "Each applicant must show valid photo ID,</p> <p>4 such as valid driver's license."</p> <p>5 Do you see that?</p> <p>6 A I see that.</p> <p>7 Q So marriage is an important right, just</p> <p>8 like voting. Correct?</p> <p>9 A Yes.</p> <p>10 Q It's a fundamental right?</p> <p>11 A Yes.</p> <p>12 Q So why do you think Milwaukee County is</p> <p>13 requiring a photo ID to exercise that fundamental</p> <p>14 right?</p> <p>15 A I'm not sure they are.</p> <p>16 Q No?</p> <p>17 A Let me tell you why.</p> <p>18 Q Okay.</p> <p>19 A First of all, I don't know what a valid</p> <p>20 photo ID is.</p> <p>21 Q Right. I don't, either.</p> <p>22 A It could be a vastly wider array. Could</p> <p>23 be you know. My AU faculty ID. They don't specify.</p> <p>24 So this is not comparable to the Wisconsin</p> <p>25 voting photo ID law, which is extremely restrictive.</p>	<p>1 here.</p> <p>2 Q Okay. Next exhibit is going to be the</p> <p>3 rebuttal report.</p> <p>4 A Okay.</p> <p>5 MR. KAWSKI: So if you want to mark that</p> <p>6 one Exhibit 5.</p> <p>7 (Lichtman Deposition Exhibit 5 marked for</p> <p>8 identification and is attached to the transcript.)</p> <p>9 MR. SPIVA: While we mark this, do you</p> <p>10 mind if we take a short break?</p> <p>11 MR. KAWSKI: Sure.</p> <p>12 (A recess was taken.)</p> <p>13 BY MR. KAWSKI:</p> <p>14 Q So please take a look at Exhibit 5 and let</p> <p>15 me know what that is.</p> <p>16 A Oh, okay. This just blacks out names.</p> <p>17 Right.</p> <p>18 Q Yes.</p> <p>19 A That's fine. I'm just going through it</p> <p>20 quickly. This is my rebuttal report. This is</p> <p>21 complete.</p> <p>22 Q So I did bring -- there were two versions</p> <p>23 that were filed in court.</p> <p>24 A Right.</p> <p>25 Q One was the redacted, one was the not</p>
170	172
<p>1 Plus, for example, while if you took a</p> <p>2 superficial look at the Transportation Security</p> <p>3 Agency, you would think you had to bring a photo ID.</p> <p>4 But, in fact, there are all kinds of exceptions if</p> <p>5 you don't have it.</p> <p>6 I have no idea whether there are</p> <p>7 exceptions in Milwaukee. There may well be.</p> <p>8 Q Wouldn't the fact that it says "valid</p> <p>9 photo ID" suggest that there is a lot of discretion</p> <p>10 in the hands of government as to whether you get a</p> <p>11 marriage certificate or license?</p> <p>12 A There may well be. And that's why I said</p> <p>13 there may also be exceptions.</p> <p>14 Q Okay.</p> <p>15 A And there often aren't, even when you say</p> <p>16 you have to show a photo ID. So you would have to</p> <p>17 delve a little more deeply.</p> <p>18 Q But you acknowledge, though, that it</p> <p>19 appears Milwaukee County requires a photo ID to get</p> <p>20 a marriage license?</p> <p>21 A That's what it says. But I am not sure in</p> <p>22 practice what that means. Let me look at this a</p> <p>23 little more and see if there's any further</p> <p>24 clarification.</p> <p>25 No, there is no further clarification</p>	<p>1 redacted.</p> <p>2 A Right.</p> <p>3 Q I used the redacted one.</p> <p>4 A So you're not going to ask me about names.</p> <p>5 Q No.</p> <p>6 A Okay.</p> <p>7 Q So this is your rebuttal report executed</p> <p>8 February 16th, 2016. Correct?</p> <p>9 A Yes.</p> <p>10 Q In this case.</p> <p>11 When did you write it?</p> <p>12 A After I saw the report of defendants'</p> <p>13 expert.</p> <p>14 Q So maybe in January 2016?</p> <p>15 A Well, through February 16th, yeah.</p> <p>16 Q When you wrote your initial report, you</p> <p>17 didn't have the information you talk about in this</p> <p>18 report with regard to individual voters who use the</p> <p>19 IDPP?</p> <p>20 A I had no individual voter data.</p> <p>21 Q Do you recall when you were provided with</p> <p>22 that individual voter data?</p> <p>23 A Pretty shortly before I finished this</p> <p>24 report.</p> <p>25 Q Okay. And you were provided that by</p>

1 counsel? 2 A Yes. 3 Q Okay. 4 A With the stipulation that it had come from 5 the state. 6 Q Okay. 7 A Not that it was something worked up by 8 counsel. 9 Q Okay. I'm going to flip you ahead right 10 away to Page 14, Table 7. I think it touches on an 11 issue we've talked about already. 12 A We briefly talked about that, that's 13 correct. 14 Q So Table 7, you're summarizing the 15 percentages of newly issued renewal and duplicate 16 nondriver IDs that the Wisconsin DMV issued from 17 July 2011 through September 2015. 18 A Right. That was the last data I had at 19 that time. More data is coming in. 20 Q Right. 21 A But that's what I had then. 22 Q So below the table you state, "However, 23 the vast majority of IDs included in this analysis, 24 80 percent, are free IDs." 25 A Right. They're not all free IDs.	173 1 with specificity those percentages. 2 Q Okay. All right. And we've talked about 3 how -- you used numbers that were available to you 4 at the time, and that there are more recent numbers 5 available. Correct? 6 A I believe that's right. 7 Q Okay. And that if you're given the more 8 recent data, you will form opinions about it? 9 A Of course. I'm not going to blind myself 10 to it. 11 Q Okay. And you have not analyzed any data 12 about the February 2016 or April 2016 elections? 13 A Only what I saw in the press. And I was 14 given one document from Milwaukee for 2015. 15 Q Okay. 16 A Which I just got last night. 17 Q You talk in this report about the Texas 18 law and the Texas decision by the fifth circuit? 19 A That's correct. 20 Q You were an expert in the Texas case? 21 A Correct. 22 Q What was your role or area of expertise in 23 that case? 24 A It was similar to this one, analyzing 25 intent.
1 Q Okay. So of the total IDs, the number 2 here in Table 7 is 498,244. Eighty percent of those 3 were free IDs? 4 A I believe that's right. 5 Q Okay. So approximately, in your 6 estimation, 400,000 free ID cards were issued 7 between July 2011 and September 2015. 8 A Approximately. Counting duplicates, 9 renewals, and new. 10 And that number of which are free and 11 which aren't aren't broken down into these separate 12 three categories. That's why I had to put the 13 footnote on the bottom, just to make sure I was as 14 accurate as I could be within the parameters of the 15 data. 16 Q Okay. And so I want to ask if the 80 17 percent free ID, can that be applied to the newly 18 issued IDs column, meaning 80 percent of the count 19 for newly issued IDs would be considered free IDs? 20 A I think I just explained, they didn't 21 doubly break it down. That is, they didn't break it 22 down into free and nonfree, and then break it down 23 into newly, duplicate, and renewal. 24 So we don't know. It's probably not going 25 to vary enormously from that, but I can't tell you	174 1 Q Okay. And so you concluded that the Texas 2 voter ID law was passed with a racially 3 discriminatory intent? 4 A I did. 5 Q And that conclusion has since been vacated 6 by the fifth circuit? 7 A Not exactly. 8 Q No? Okay. What's your understanding? 9 A I will tell you my understanding. Again 10 not being a lawyer. But my understanding is that 11 the fifth circuit didn't refer to me at all or any 12 expert work. There were some legal issues in the 13 district court which found discriminatory intent. 14 And they remanded the issue back to the district 15 court for reconsideration of the intent issue in 16 light, like I said, not of anything I said, but in 17 light of these legal issues. 18 Q And so they remanded it. But then 19 subsequent to that the entire fifth circuit is now 20 taking up the case? 21 A That is correct. 22 Q So your -- the opinion that incorporated 23 your analysis has been vacated. Correct? 24 A I don't know what you mean by that. My 25 understanding is it was remanded back to the

1 district. I don't know what the legal posture is, 2 since the fifth circuit simply said we are going to 3 look at it. 4 Q Okay. But to date you haven't been asked 5 to testify again in Texas? 6 A No. Because it's up before the en banc 7 fifth circuit and I don't believe they're taking 8 testimony. 9 Q And so no one has asked you to prepare any 10 supplemental reports in Texas? 11 A No, no one has asked me to prepare 12 anything. That may happen depending on, you know, 13 where all of this goes. And it could be -- things 14 in Texas move slowly. 15 Q Right. 16 A It could be a long time. 17 Q Right. On Pages 11 and 12 of this 18 rebuttal, you talk about the usage of in-person 19 absentee voting. Correct? 20 A Yes. 21 Q And you conclude that the rate of 22 in-person absentee voting went up in Madison and 23 Milwaukee between 2010 and 2014. Correct? 24 A Absolutely. 25 Q Okay. And so that -- that is the period	177 1 (Lichtman Deposition Exhibit 6 and Exhibit 2 7 marked for identification and are attached to the 3 transcript.) 4 Q So take a look at Exhibit 6 and Exhibit 7. 5 A Do you want me to look at the whole -- 6 there's a lot of pages here. 7 Q You can flip through. If you want to. 8 A I really don't want to. 9 Q Marquette was Exhibit 6. 10 A I am familiar with this poll, yes. So if 11 you want to direct me to anything within the poll, 12 that's fine. 13 Q Okay. 14 A I don't need to read through the whole 15 thing. 16 Q Sure. What is Exhibit 6? 17 A It is a Marquette Law School Poll 18 conducted between October 23rd and October 26, 2014. 19 What I don't know and I'm not going to 20 take the time at the moment is what aspects of the 21 poll -- it was a very big poll -- are included in 22 this particular exhibit. 23 Q Okay. If you'll flip to the page that has 24 Question Number 18. 25 A Sure. I'm there.
1 of time that we're talking about here when these 2 laws, with the exception of the voter ID law, were 3 in effect? 4 A I believe that's right. There was a law I 5 think that was dated to 2014. I can't swear whether 6 it was in effect or not. But basically that's 7 correct. With the exception of voter photo ID. 8 Q Okay. 9 A But, of course, that was not what I was 10 analyzing. You understand that. 11 Q Right. I understand that. 12 A Okay. Fair enough. 13 Q All right. I don't really have any other 14 questions about that report. 15 A Okay. 16 Q But I do have a couple more exhibits that 17 I may as well just bring out together. 18 A Sure. 19 Q We've talked a little bit about them. 20 A That's fine. 21 Q All right. 22 A It looks like it's those polls. 23 Q Yeah, those polls. So one is the 24 Marquette poll, and the other is the Pew Research 25 Center poll.	178 1 Q Okay. And you see, "Do you favor/oppose 2 requiring a government-issued photo ID to vote"? 3 A I do. 4 Q And you see that 60.4 percent of Wisconsin 5 likely voters who are polled favored such a 6 requirement? 7 A Correct. 8 Q And 36 percent opposed? 9 A Correct. 10 Q 3.1 percent didn't know? 11 A Correct. 12 Q At the time this poll was conducted, was 13 the voter photo voter ID requirement in effect? 14 A That is a tricky question. 15 Q Not really. 16 A It was enacted, but I don't believe it was 17 operable. 18 Q Right. But there was -- are you familiar 19 with another Marquette Law School poll that was 20 conducted only weeks before this one? 21 A I think it was conducted in March. Is 22 that the one you're thinking about? 23 Q This was October 9th, 2014. 24 A I'm not. You know, there's a lot of 25 Marquette polls. I'm not sure I can spotlight each

1 one of them by the exact date. But if you show it 2 to me, I'm happy to talk about it. 3 Q I just wanted to know if you're aware of 4 that one. 5 A Yeah, I'm aware there are constant 6 Marquette polls. 7 Q Okay. So in terms of the Question 18 and 8 it shows that 60.4 percent of those polled likely 9 voters favored a photo ID requirement, how do you 10 react to that? 11 A Well, we talked about that before. It's 12 not surprising, because most people aren't affected 13 by photo ID. You know, it's -- the minorities, 14 it's -- not all minorities, by any means. Even a 15 minority of minorities who are affected. 16 So, you know, the majority of people have 17 photo IDs, so it doesn't affect them. And there's 18 been a lot of talk about it. And you find this 19 everywhere. 20 But, on the other hand, you also find 56.1 21 percent, almost the same, probably within the margin 22 of error, want to raise the minimum wage. And you 23 don't see the Republican legislature moving to raise 24 the minimum wage. 25 And this is the point I made earlier about	181 1 that it's summarizing a survey is, "Should voters be 2 required to show official photo ID before they vote 3 on election day." 4 Do you see that? 5 A I do. 6 Q And of all respondents, 77 percent agreed 7 that you should, 95 percent of Republicans agreed 8 that you should, 61 percent of Democrats agreed that 9 you should and 83 percent of independents agreed 10 that you should. 11 A Yeah. Of course. Those are the numbers. 12 Q Okay. And so that's from September 12th 13 through the 16th, 2012, a poll conducted during that 14 time frame. Correct? 15 A That's correct. 16 Q And conducted of registered voters? 17 A It says all registered voters. 18 Q Okay. And I guess what it doesn't state 19 is that whether it's polling nationwide or in just 20 states with strict requirements. Correct? It 21 doesn't say that? 22 A It doesn't. 23 Q So I guess we don't know if it's a 24 national poll or not. 25 But does that -- do those numbers surprise
1 other polling data that I point to in my report as 2 strong or stronger than support for government photo 3 ID, but the legislature is not acting on those 4 things. 5 Q Take a look at Exhibit 7. 6 Do you recognize that exhibit? 7 A God, I've seen so many polls. I don't see 8 a date on this. But ask me questions about it. 9 Q Sure. 10 A September 12th. Yeah, I do see it. 11 Q October 11th, 2012, on the first page, do 12 you see that? 13 A Yes. Okay. Fair enough. 14 Q Very small. 15 MR. SPIVA: Please, is this an excerpt or 16 is it -- 17 MR. KAWSKI: I believe it's the -- pulled 18 it from the Pew Research Center website, so it's a 19 summary. 20 MR. SPIVA: Okay. I got it. Okay. I 21 just wanted to know. 22 Q So have you seen this before? 23 A I think so. 24 Q Okay. And so you see the table on the 25 first page there showing the -- the first question	182 1 you at all? 2 A I suspect, by the way, it's a national 3 number. 4 Q Okay. 5 A No. We've already discussed this at 6 length. I'm not surprised by the fact that the 7 majority should be favoring an idea. 8 And look what it says, "official photo 9 ID." But Wisconsin eliminates lots of official 10 photo IDs. So you certainly could not cite this 11 poll as support for Wisconsin's photo voter ID law, 12 which elaborates the point I made before. You have 13 to look at exactly what these polls are asking 14 people. And they're not necessarily asking people 15 in terms of the specific voter ID law you have in 16 Wisconsin. 17 Q Some of the required forms in Wisconsin 18 are official photo IDs. Correct? 19 A Some, but there are huge ones, like 20 government employee IDs, that are eliminated. 21 Q What about non-official photo IDs that 22 Wisconsin permits? 23 A It does permit -- I'm trying to think what 24 it does permit. I have to look. 25 Q Tribal IDs, for example?

185

187

1 **A Yes. But I don't think it permits very**
 2 **many non-official IDs.**

3 Q In terms of the number of categories in
 4 Wisconsin, I believe that -- would it be fair to say
 5 there are about nine categories of types of IDs?

6 **A Something like that.**

7 Q But within those nine categories --

8 **A I think I have it in my report.**

9 Q I think you do, too. But even within
 10 those categories, isn't it fair to say that there
 11 are dozens of variants? Some of the categories
 12 include dozens of options. Correct?

13 **A I don't know what that means. Let's go to**
 14 **the actual. It would be better if we turn to it.**

15 Q Sure.

16 **A Here it is. Okay. I think it's on Page**
 17 **24.**

18 Q Okay. And this is the initial report,
 19 Exhibit 1?

20 **A Yeah.**

21 Q Okay. So Page 24 of Exhibit 1, you list
 22 the various forms of ID cards. Correct?

23 **A Right. Yeah.**

24 Q So, for example, in the -- the military ID
 25 card issued by the U.S. uniformed services -- excuse

1 **government ID, it would actually make it a lot**
 2 **easier for the poll workers. And all of these**
 3 **distinctions that you have in here in the Wisconsin**
 4 **voter ID law, that departs markedly from laws that**
 5 **have been compared to it, like Georgia and Indiana,**
 6 **where I can present any government-issued ID. Here**
 7 **I can't.**

8 Q In one of your reports you have a table
 9 that compares the various states. Correct?

10 **A I think it's in my rebuttal report. I**
 11 **think it was not my table, it was Hood's table, and**
 12 **I commented on Hood's table.**

13 Q Okay.

14 **A Are we going to that now?**

15 Q Yes. That's on Page 10 of the rebuttal
 16 report, which is Exhibit 5.

17 **A Okay. Yeah.**

18 Q And so the point you're making is that in
 19 Georgia there is a category of federal, state, local
 20 government employees IDs that Georgia permits,
 21 Wisconsin does not. That is one of your points?

22 **A Yes. I have many points, but that's one**
 23 **of them.**

24 Q Okay. And then I see that Georgia does
 25 not permit the U.S. citizenship certificate, but

186

188

1 me. You agree that there are several different
 2 military ID cards that would be permitted?

3 **A Well, obviously Army, Navy, Marines. But**
 4 **you're talking about a tiny percentage. And those**
 5 **differences aren't especially meaningful.**

6 Q Okay. What about the college -- college
 7 or accredited university ID cards, which you
 8 reference on Page 25 of Exhibit 1?

9 **A Right. Those are very restrictive.**

10 **They're not just broadly permitted college IDs.**
 11 **It's got to have the date of issuance, the signature**
 12 **of the students, and expiration date no later than**
 13 **two years, and a separate document.**

14 And as we well know from the testimony of
 15 the GAB at the time this was adopted, most student
 16 IDs in the State of Wisconsin did not conform to
 17 these requirements.

18 Q So in selecting so many different
 19 categories, though, doesn't it create a challenge
 20 for the poll worker who has to familiarize himself
 21 or herself with all the forms that are permitted?

22 **A No. I don't think it's the number of**
 23 **categories. I think it's the way you define the IDs**
 24 **that are more important.**

25 **If you simply allowed any official**

1 Wisconsin does?

2 **A That's correct.**

3 Q Okay. How do -- I know that this is --
 4 you said that Table 16 was Hood's table.

5 Could you describe for me how Virginia's
 6 law aligns with these states?

7 **A You know, you don't want me doing this**
 8 **from memory. I've been through so many of these**
 9 **laws. But I believe I comment on Virginia's law in**
 10 **here.**

11 Q Okay.

12 **A So if we can just turn to what I said**
 13 **about it.**

14 Q Okay.

15 **A I think that would be better than relying**
 16 **on my memory.**

17 Ah. Here is what I say about the Virginia
 18 law. I do remember.

19 In Virginia you can get a free photo ID
 20 without documentation. You just go to the state
 21 office and affirm I'm Allan Lichtman and I get a
 22 free ID. That's fundamentally different, obviously,
 23 than Wisconsin.

24 Q But as we talked about earlier, you didn't
 25 remember the number of people that used that option,

<p>189</p> <p>1 but it was very small number?</p> <p>2 A I don't remember the number. But it is</p> <p>3 available in Virginia. However many use it and will</p> <p>4 use it over time, who knows? I don't think there's</p> <p>5 been a presidential election yet that's been</p> <p>6 conducted in Virginia under the new voter photo ID</p> <p>7 law. Which is also in the hands of a judge.</p> <p>8 Q Has their law been in place yet, in</p> <p>9 effect?</p> <p>10 A I think just for 2014 and '15.</p> <p>11 Q Okay. Let's talk about just a couple</p> <p>12 alternatives that have come up recently as law</p> <p>13 changes that are proposed. One of which is online</p> <p>14 voter registration in Wisconsin. A bill has been</p> <p>15 proposed?</p> <p>16 A Right.</p> <p>17 Q Have you followed that?</p> <p>18 A I thought you could do, but maybe I</p> <p>19 misread. Maybe I read that a bill was proposed</p> <p>20 rather than that being already an option. But I am</p> <p>21 happy to take your representation of it.</p> <p>22 Q Sure. So you're not aware of the bill,</p> <p>23 the specifics of it?</p> <p>24 A No. Again, I probably, when I was reading</p> <p>25 through the material, I thought it was already</p>	<p>191</p> <p>1 common. You've had a trend in recent years towards</p> <p>2 election day registration.</p> <p>3 I'm not sure of the exact number now</p> <p>4 because it is a moving target. There may be</p> <p>5 approximately a dozen states have adopted same-day</p> <p>6 registration.</p> <p>7 Q And is there also a trend moving towards</p> <p>8 automatically registering voters when they take</p> <p>9 certain actions?</p> <p>10 A Well, I don't know if you would call it a</p> <p>11 trend. But Oregon adopted that very recently. And</p> <p>12 I believe it was path-breaking for Oregon to do</p> <p>13 that. I'm not sure any other state had done that to</p> <p>14 that point, at least in modern history.</p> <p>15 And I believe it's being considered</p> <p>16 elsewhere.</p> <p>17 Q And you mentioned that in Maryland you're</p> <p>18 able to vote from your home electronically.</p> <p>19 Correct?</p> <p>20 A I haven't tried it. So I don't know. But</p> <p>21 I'm going to try.</p> <p>22 Q Is it something new?</p> <p>23 A I've never voted absentee before, so I</p> <p>24 can't say.</p> <p>25 Q Okay.</p>
<p>190</p> <p>1 adopted. But now you're telling me it's just being</p> <p>2 considered.</p> <p>3 Q Okay.</p> <p>4 A I am not aware of the details of it.</p> <p>5 Q Okay. In Wisconsin we have the option of</p> <p>6 same-day registration.</p> <p>7 A That's correct.</p> <p>8 Q On election day.</p> <p>9 A Yes.</p> <p>10 Q How does that impact, you know, whether</p> <p>11 Wisconsin is a very permissive or not so permissive</p> <p>12 state in terms of its registration practices, in</p> <p>13 your mind?</p> <p>14 A Well, that's, I think -- I don't know</p> <p>15 about the word "permissive," it carries certain</p> <p>16 connotations to it.</p> <p>17 But let's say open state with respect to</p> <p>18 registration, absolutely. That's one of the reasons</p> <p>19 why Wisconsin has ranked so high on election</p> <p>20 administration and ranked so high on voter turnout</p> <p>21 as part of my analysis of a system that wasn't</p> <p>22 broken and didn't need to be fixed.</p> <p>23 Q Is election day registration common or</p> <p>24 uncommon in terms of how many states have it?</p> <p>25 A It's not common, but it's increasingly</p>	<p>192</p> <p>1 MR. KAWSKI: Why don't we take a break</p> <p>2 now. I'm going to go through my notes, but we're</p> <p>3 almost done.</p> <p>4 MR. SPIVA: Okay. Great.</p> <p>5 (A recess was taken.)</p> <p>6 MR. KAWSKI: I have no further questions.</p> <p>7 MR. SPIVA: Oh, okay. That was easy. All</p> <p>8 right. Thank you. I don't have any questions.</p> <p>9 MR. KAWSKI: All right. We're all set.</p> <p>10 Done.</p> <p>11 COURT REPORTER: Mr Spiva, do you need a</p> <p>12 copy?</p> <p>13 MR. SPIVA: Oh, yes.</p> <p>14 MR. KAWSKI: I just need a PDF copy.</p> <p>15 (Off the record at 2:02 p.m.)</p>

193

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC
2 I, Debra Ann Whitehead, the officer before whom
3 the foregoing deposition was taken, do hereby
4 certify that the foregoing transcript is a true and
5 correct record of the testimony given; that said
6 testimony was taken by me stenographically and
7 thereafter reduced to typewriting under my
8 direction; that reading and signing was not
9 requested; and that I am neither counsel for,
10 related to, nor employed by any of the parties to
11 this case and have no interest, financial or
12 otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set my hand and
14 affixed my notarial seal this 1st day of May, 2016.

15

16 My commission expires:
17 September 14, 2018

18

19 -----

20 NOTARY PUBLIC IN AND FOR THE
21 DISTRICT OF COLUMBIA

22

23

24

25

A	168:19 172:4,17 173:11,12 175:2,8,12 175:17 177:18 178:1 178:14,19 180:22 181:2,11,18,25 182:8 184:21 185:5 186:4,6 188:13,17,24 189:11 190:15	accolade 16:15 accomplishment 13:23 According 157:20 account 125:17 Accountability 50:22 83:14 accounts 52:11 accredited 186:7 accurate 124:8,11 148:7 174:14 accusing 102:24,25 acknowledge 97:10 170:18 across 109:6 117:19 157:17 act 48:5 87:13 99:2,3,6,9 99:18,21 100:6,8,13 100:16,17 128:22 133:14 135:5 162:25	132:13 133:6 139:1 150:10,11,16 187:1 add 110:19 addition 26:13 48:13 49:23 63:9 67:2 90:20 159:23 additional 26:12 84:23 103:19 109:3 131:20 address 27:13,15,16,18,21 63:8 addressed 75:25 addresses 70:14 120:14 addressing 78:20 Adelman 85:24 adequately 164:18 administration 19:25 30:20 43:21 93:23 94:5 117:14 190:20 administrative 53:3,24 54:2 57:3 152:24 162:6 administrator 83:16,21 administrators 162:7 adopt 88:13 94:3 139:5 141:5 165:23 adopted 42:10 62:23 66:17 69:13 87:7,13 88:23 91:8 92:8 93:20 101:3 133:14 186:15 190:1 191:5,11 adopting 8:15 68:15 106:11 adoption 42:9 45:2 62:22 108:6 145:23 147:6
ability 109:12,14 153:17 able 5:23 47:3,4 75:11 191:18 about 7:21 8:6,9,19 9:1,4,8 10:10,15,18 11:7,7,8 12:21 13:16 14:6 16:23 17:11 20:17 21:7 24:14 27:3 30:21 34:3,11,12,12 34:16,21 35:5 36:17 36:18,21,22 37:5,13 37:14 38:7,10,12 39:14 42:6 43:12 44:14 46:8,9,14,15 48:24 51:22 52:16,22 54:14,22 56:16,19,22 57:11,13 58:11 59:13 60:14 64:13,14,17 65:13 66:4 69:5,9 71:11 72:6,10,16 73:9 74:10,16 77:1 78:9 80:7 81:1 82:12 83:20 84:13 85:19 86:11,15,16,17,21 87:14,15 90:5,19 91:19,19,21 92:14 93:19 95:25 96:20 97:6,7 99:9,16,23 100:5 102:9 104:19 104:19,23 105:19 106:5 107:5,9,14 108:15,16,17,24 118:2 119:24 120:5,9 120:10 121:21 126:4 128:1,21 129:22 131:2,7 133:12,22,24 135:1 138:15 139:12 139:16 140:25 145:1 145:3,16,16 146:3 149:8 152:21 155:15 157:1 161:5,15 162:22 163:9 165:6 166:2,17,25 167:6,13	abrogation 161:5 absent 117:8 absentee 28:21,23,24 29:1,23,24 30:4,6,9 31:1,2,11,13 31:18 32:6,10,14,15 32:21,23,24,25 33:1,4 33:9,16,17 34:6,18,19 36:3,5 61:8,15,16,21 62:2,9 65:5 97:2 127:12 162:23 177:19 177:22 191:23 absolutely 19:9 23:20 31:20 44:5 46:1 70:22 75:15 77:11 99:12 100:5 102:3 149:17 151:14 155:15 156:18 177:24 190:18 absorbed 11:3 abstract 128:16 Academy 18:17 accept 33:20 acceptable 25:18,23 26:10 36:9 47:8 106:8 131:20 159:13 accepted 70:23 access 137:7 accident 81:6	accolade 16:15 accomplishment 13:23 According 157:20 account 125:17 Accountability 50:22 83:14 accounts 52:11 accredited 186:7 accurate 124:8,11 148:7 174:14 accusing 102:24,25 acknowledge 97:10 170:18 across 109:6 117:19 157:17 act 48:5 87:13 99:2,3,6,9 99:18,21 100:6,8,13 100:16,17 128:22 133:14 135:5 162:25	accolade 132:13 133:6 139:1 150:10,11,16 187:1 add 110:19 addition 26:13 48:13 49:23 63:9 67:2 90:20 159:23 additional 26:12 84:23 103:19 109:3 131:20 address 27:13,15,16,18,21 63:8 addressed 75:25 addresses 70:14 120:14 addressing 78:20 Adelman 85:24 adequately 164:18 administration 19:25 30:20 43:21 93:23 94:5 117:14 190:20 administrative 53:3,24 54:2 57:3 152:24 162:6 administrator 83:16,21 administrators 162:7 adopt 88:13 94:3 139:5 141:5 165:23 adopted 42:10 62:23 66:17 69:13 87:7,13 88:23 91:8 92:8 93:20 101:3 133:14 186:15 190:1 191:5,11 adopting 8:15 68:15 106:11 adoption 42:9 45:2 62:22 108:6 145:23 147:6

advantage 68:1 101:16 103:2 104:1,6 156:12	62:19,20 65:25 73:16 74:18 75:17 80:9 81:1 84:21 85:17	aligns 188:6	72:6 74:7 76:8 89:3 89:11 119:13 140:2
adverse 87:21 90:9	96:7,10 103:25 104:23 112:15 118:2	all 6:17 7:21 12:20 19:21	142:4 173:11 184:5 189:20,25
advisor 92:12	122:2 123:22 132:13 134:1 146:7 152:10	22:24 34:1,7 35:7 48:2 49:7,18 56:2	also 8:2,4,11,16 17:23,25 18:2,6,10,15 21:24
affect 46:10 109:11,14 113:9 125:23 126:10 181:17	153:12 159:12 160:8 161:10,11 163:6 165:19 166:13 176:9 177:5 189:24	59:14 60:18 62:11 66:3 67:23 68:19 69:16,20 71:2 73:16 73:17 74:17 84:10	28:25 31:25 32:3,20 34:23 40:16 43:10 44:6 46:20 52:16 54:8 58:15 67:9
affected 126:16,21 142:11 160:9 181:12,15	against 22:5,22 23:15 41:3	86:10 89:16 91:17 97:6 100:18 106:2 108:23 109:17,18	81:21 95:10,18 105:15 144:14,23
affecting 85:25	42:11 44:17 68:13 78:3 90:25 99:4,4	110:7,10,10 113:7,11 114:12 115:20 118:21	156:14 170:13 181:20 189:7 191:7
affects 46:8 84:21 113:14	101:18,18 117:9	119:8 123:9 128:25 140:16 141:21 142:1	alternative 97:1 131:6 132:5 153:6
affidavit 47:4,6,9 60:1 86:19 87:12	age 67:10	142:9 143:8 146:5,7,9 147:20 150:21 155:9	alternatives 132:7 189:12
affirm 60:3 188:21	agency 89:4 170:3	155:19,23 156:6,10 156:25 157:6,17	although 15:3,24 54:19 67:13 132:23 167:19
affirmation 60:8	aggregate 94:9,21 95:3,5,23 118:15 119:12	161:22,23 165:1 168:17 169:19 170:4	always 5:15 10:10 47:17,18 62:5 96:12 106:13
affixed 193:14	ago 6:4,10 8:10 13:17 16:2 24:19,20 41:6 65:22 73:1	173:25 175:2 176:11 177:13 178:13,21 181:14 183:6,17 184:1 186:21 187:2	ambitious 70:17 101:15
African-American 65:12 84:9 103:11 133:4 159:9 160:1,5	agree 90:11 124:8 126:1,10 127:22 128:7,13 134:11 152:12 153:3 162:1 186:1	192:7,9,9 Allan 1:12 2:1 4:2,9,19 5:2 188:21	ameliorate 153:14
African-Americans 47:12,15,16,18 63:2 78:3,25 79:3,7 84:7 84:11 85:9 87:9 99:5 103:15 107:15 134:21 153:4 154:3,13 155:18 159:1,14	agreed 183:6,7,8,9	allow 6:16 149:17	ameliorative 90:8 91:10
after 13:10 26:6 48:9,11 79:10 86:12,13 87:20 101:9 119:5 144:9 145:11 148:1 156:8,8 156:8 172:12	Ah 188:17	allowed 151:21 186:25	amelioratory 88:16,23
afternoon 146:3	ahead 59:12,12 98:20 109:24 147:22 173:9	allowing 96:21	amendment 19:15 149:21
again 11:1 23:19,23 39:9 47:15 49:1 56:4 59:4	aid 150:4	almost 117:25 152:6,8 181:21 192:3	amendments 97:6,7
	aides 8:13	alone 106:13	America 44:9,10 124:22
	al 1:5,8	along 100:24,24 130:3	American 13:4,13 14:1,3,11,21 14:25 15:9,12,24 16:2
	alcohol 6:20	already 10:23 27:25 34:25 48:10 60:2 62:18	18:4,13,25 19:22 20:18 43:17,20 70:11 72:7 132:9 139:17 140:4 145:11
			Americans

144:11 165:12	Ansolabehere	6:22 11:7 21:5 22:13 28:2,5 74:6 77:17 86:2 101:17 105:3 111:11 126:12 129:9 129:25 137:25 148:11 149:10 153:8 157:9 157:15 166:14 176:16 177:12 179:11	1:14 8:20 94:11 175:12 area 16:20 138:9 175:22 areas 17:6,7 argument 22:21,25 23:4 96:15 119:10 150:20 arguments 96:12 Arlington 66:25 67:15 69:3,9 156:16,18,22 164:22 Army 186:3 around 149:3 array 50:18 169:22 article 4:13 18:2 52:15 70:17 71:12 72:10,17,25 73:7,17 135:25 136:2 137:13 142:22 articles 8:23 18:16,20 72:14 73:17 74:5,23 75:1,14 75:15 76:12 ascertain 91:14 ascertaining 67:4 aside 10:23 121:2 asked 10:2 37:22,22,24 52:7 56:23 63:9 69:23 73:12 74:9,9 140:25 145:16 177:4,9,11 asking 27:2 49:12 58:14 116:22 123:2,4,10,23 123:24 134:14 160:11 184:13,14 asks 69:10 136:15 156:19 156:20
among	4:17 138:4,11 142:22		
16:6 94:22 159:15	answer	86:2 101:17 105:3 111:11 126:12 129:9 129:25 137:25 148:11 149:10 153:8 157:9 157:15 166:14 176:16 177:12 179:11	
amount	6:15,25 17:3 39:2 41:25 55:23 56:25 69:24 81:4 82:9 83:12 87:3 89:10,23 118:22 136:21 160:13		
analyses	answered	anyway	
37:25 52:1 65:2	7:6 56:24 89:11 123:9	69:8	
analysis	answering	anywhere	
15:17 16:25 17:14,18 17:24 18:7 43:2,5,10 44:1 45:14 50:21 58:6 68:20 70:2,3 81:18 94:24 101:5 105:9 106:7 107:21 110:15 112:3 113:19 114:23 125:14 133:8 133:17 134:4 145:19 149:4 151:1,2,9 155:5 155:11 157:6,7 161:8 164:6,22 173:23 176:23 190:21	103:16	36:24 76:11 102:23,23 103:11 124:22	
analyst	any	Apparently	
22:12 44:7 81:7	6:19 7:4 8:19 9:17,24 10:15,18,22 11:25 12:13,21 14:15 19:7 20:15 21:4,12 23:18 26:11,14 27:22 28:6 32:8,22 37:4,8,10,12 40:3 48:15,16 51:11 57:20 60:7,9 63:9,19 65:23 66:12,14 68:19 75:2,13 76:21 79:16 87:16 89:14 90:12 91:7 92:7 94:17,23 101:25 104:24 105:3 105:24 110:9 111:11 114:10 115:22 122:15 122:16 123:19 126:13 132:19 135:6 143:7 145:10 147:3,11,14 148:11 154:24 155:1 157:8,14 159:8 162:16,19 166:10,21 167:25 170:23 175:11 176:11 177:9 178:13 181:14 186:25 187:6 191:13 192:8 193:10	7:12	
analyzing	anybody	appear	
44:3 152:15 175:24 178:10	142:10	37:19	
ancient	anymore	appeared	
22:3 124:10,17	125:7	8:17	
anecdotal	anyone	appears	
133:3	10:6 42:23 89:24 134:8	143:24 170:19	
Ann	anyone's	applicant	
193:2	62:4	169:3	
another	anything	Application	
16:18,20 48:19 59:22 72:22 104:16,18 120:16 121:3 124:1 135:20 153:6 155:23 168:10 180:19		168:24	

aspect 98:15 131:15	authorized 152:3	20:19 26:3 43:25 77:3,21 78:24 82:6,10	178:6
aspects 78:15 179:20	automatic 48:6	89:5 91:9 117:6 128:20 131:24 135:11	basics 5:16
asserted 50:6	automatically 116:3 191:8	139:13 141:6 176:14 176:25	basis 144:16 151:13
assess 76:13	availability 82:17	background 12:22 67:5	bear 67:3
assistant 3:12 5:8 13:15	available 12:10,14,17 55:4 91:25 92:4 110:25 124:25 125:2 133:13 135:4	backup 52:2	bears 65:16 151:9,11
assume 7:1 13:12	137:24 138:21,23 140:24 141:2 142:16 144:21 145:5 147:21 158:23 159:19 175:3 175:5 189:3	bad 24:14 141:21	beautiful 14:13
Atilla 23:2	avalanche 39:13	balance 68:13,20	became 13:8
attached 4:6 12:18 49:11 121:8 135:23 168:12 171:8 179:2	average 35:7	balancing 68:7,11	because 9:20 11:1,13 23:15 27:1 30:18 31:16,22 33:3 34:13 35:22,23 36:4,8 39:3,13,16
attachment 162:12	avoid 6:13 32:13,18	ballot 24:23 25:14,15,25 26:1 26:1,8,11,15,18,21	40:21,24 51:8,25
attachments 49:6	avoiding 33:7	27:6,23 28:3,21,23,24 29:2 30:7,9 32:6,15	53:23 56:8 58:2,4,11
attacking 138:11	Award 33:7	32:21,23,24,25 33:1,4 33:9,16 34:19 36:3	59:4 65:8 67:12,24,25
attenuated 151:24	awards 19:2 76:12	45:19 52:5,8,12,21 61:8 62:9,12,13	68:15,16 74:23 75:8
Attorney 3:12 5:9	award-winning 70:16	127:12 131:15 162:23	75:12 82:1 84:1,5
attorneys 7:11 10:5 12:17 52:17	aware 26:20 28:1,4 37:10 77:13 91:6 115:5 132:21 134:9 135:6 147:3,14 157:14 167:10,25 181:3,5 189:22 190:4	balloting 52:1	92:8,18 93:8,20 94:3
attribute 140:8	away 21:20,24 173:10	ballots 33:17 34:18 36:3,5 61:14,18 79:12,22,25 80:1 81:1 97:3 131:6	95:4 101:18 107:15 107:25 109:3 110:10
Atwater 21:24 24:12	a.m 1:15	banc 177:6	111:12,20 113:16,23
Atwater's 24:14		barrier 36:6 138:16	114:11 116:3 120:5
AU 169:23		barring 62:7	128:18 133:11 134:23
Aulbaugh 103:20 104:14 167:5		base 103:10,11,12	137:25 138:25 140:23
author 136:20 137:5 138:4 143:21 144:4,6		based 21:4 30:18 40:25 45:19 117:21 125:16 134:25 144:15	141:24 142:11 143:11
authorities 90:24		basic 20:5 36:22,23 168:18	144:21 145:5 147:20
authorize 149:19,21		basically 12:24 13:9 18:3 19:14	148:22 150:15 151:14
	B		153:8 155:6,15
	B		156:25 158:9,10
	4:5 47:2		159:11,19 160:7
	back		161:10 164:16 166:3
	12:24 13:9 18:3 19:14		166:14 168:18 177:6
			181:12 191:4
			become 57:14 145:13
			becomes 145:15 146:1,2
			becoming 23:22
			been 5:3,16,25 7:12,24 8:3

11:13,20 13:13 14:10 14:20,25 21:13,15,16 22:10,23 23:5,20 25:2 29:14 31:16 36:16 37:8,11,24 38:13 39:13 40:7 46:22 50:2 53:20 54:17 60:22,23 63:12 74:4 76:9,20 77:5 83:9 90:21 92:10,12 93:10 94:7,12 97:13,14 100:8 108:7 124:4,25 125:17 126:7 127:5 129:8 132:23 141:1 147:9 148:24 149:17 165:25 167:11 176:5 176:23 177:4 181:18 187:5 188:8 189:5,5,8 189:14	190:1 191:15 beings 56:9 beliefs 144:13 believe 8:14 12:5 27:18 28:10 28:19 29:13 30:8 32:9,12 34:16 42:14 51:25 52:8,17 53:9 56:14 57:18 65:3,7,22 71:16 73:14 80:9 84:14 94:18 103:20 104:19 121:14 127:5 137:1,16 139:22 147:9,11 148:8,8,14 153:4 154:17 155:3 158:11 162:18 174:4 175:6 177:7 178:4 180:16 182:17 185:4 188:9 191:12,15	beyond 10:21 27:25 115:5 big 74:24 95:23 111:24 113:17 142:8 179:21 bigger 70:17 142:19 biggest 133:19 bill 101:3 104:5 117:9 149:8 150:23 151:10 152:15,15,16 156:8,8 156:8,9 189:14,19,22 bills 130:3 155:13,16 biography 24:14 bipartisan 130:6,9,11,18 birth 167:20 bit 38:12 48:20 95:25 102:13 108:10 118:3 120:8 144:17 164:10 178:19 black 41:3 115:21 blacks 114:5 150:2 152:6 171:16 black/white 73:18 blatant 154:2 blind 175:9 board 4:12 75:6 79:11 83:15 117:20 boards 75:2 Board's 50:22 bodies 80:5	body 92:7 bold 122:5 book 17:20,20 19:3 26:25 43:19,19 70:10,16,17 70:18,20 71:16 72:6 72:21,22 74:25 105:19 books 13:8 18:12 74:5,20 75:1,20 76:11 both 11:20,22 15:14 19:1 29:8 35:2 75:1 90:17 95:7,15 124:24 154:22,22 164:10 bottom 50:15 92:24 122:3,7,8 127:15 131:11 132:14 133:23 136:5 174:13 box 3:14 58:3,20 Boy 24:14 Brandeis 12:24 15:22 brand-new 58:16 95:9 break 7:4 21:4 49:13 106:25 171:10 174:21,21,22 192:1 breathe 92:14 brief 116:23 117:18 165:22 briefly 38:3 173:12 bring 38:6 120:16 135:20 170:3 171:22 178:17 broad 4:24 50:18 broader 42:13
--	---	--	--

broadly 12:17 54:22 69:14 131:18 186:10	123:8,20 125:8 127:23	145:10,13,15 156:5,7 156:10 161:9 163:3 came 8:8,9 41:5 79:1 87:5 94:4,8 102:7 153:11	193:4 challenge 40:14 41:2 64:1 77:4 163:4,19 186:19
broken 94:1 174:11 190:22	172:10 175:20,23	cases 176:20 193:11	challenged 77:1,5
brought 41:3 145:12 162:21	23:14 95:19	11:14,19,22 12:20 38:13 40:6,11 41:9	challenges 76:21,21
Brown 79:11	campus 14:13	42:20 43:4 44:22 50:1 60:22 76:21,23	challenging 40:17 111:12
BRUCE 3:3	candidate 22:9	77:6	champion 99:1,18,20 100:7
bud 104:20	candidates 24:1,4 95:11 113:9,9 114:2 115:7 117:4	cast 26:11 101:11 113:16	chance 7:16,25 8:5 87:1,4 134:16
budget 8:7	card 27:16,18,19 53:11,15 54:12,24 55:21 57:5,8 58:20 97:4 167:14 168:1 185:25	categories 174:12 185:3,5,7,10,11 186:19,23	change 88:2 96:20 115:25 119:12 133:17 161:9
bulk 65:11,13	cards 53:8 55:5 57:25 60:10 84:2 96:21,23 174:6 185:22 186:2,7	category 187:19	161:15 165:7
bullet 92:24 93:12 96:2 97:8 97:17,18 169:2	career 22:18 100:1 101:16,24	CCES 140:11,16	changed 74:18 125:5
bunch 8:24 55:12 56:4	careers 92:18	Center 4:24 178:25 182:18	changes 20:23 21:10 62:25
burden 10:25 11:5,13 78:19 79:7,18 81:19,21 88:17 156:9	Carolina 11:21 13:9 46:21,22 47:5 88:24 89:1 160:15 165:25	century 18:1 78:25 81:11 124:18,18	65:10 95:19 119:25 154:9 160:6 163:16 189:13
burdens 85:9 109:4,5 154:12	carries 190:15	certain 26:16 27:14 33:19 34:18 35:24 86:18 109:17 147:17 162:11 190:15 191:9	chapter 53:24 71:16
Burden's 65:20	case 1:7 5:11,12 6:3,6 9:12 9:14,19 10:16,18,20 11:7,8 12:4 17:8 30:15 37:13 39:22,25 40:3,5,17,19,20,21 42:5,16 43:7 44:13	certainly 7:25 31:20 34:2 37:10 41:14 42:25 48:24 51:8 57:10 62:6 65:12,16 70:10 78:11 80:4,10,13 84:13,16 84:24 87:17 91:5,8 96:16 101:11 107:12 111:11 119:22 121:18 126:13 130:16 150:5 150:17 151:21 155:4 158:19 184:10	characterize 132:2 144:18
Bush 43:21	certificate 92:8 96:19 106:6 107:13 121:15 122:23 127:3,4,6,11 131:23 133:9 144:19 145:2	167:21 170:11 187:25 193:1	charge 148:23
B.A 12:24	certify		check 58:3
<hr/> C			
C 1:8 3:1 4:1 5:1,12	calendar 33:18,22	checked 58:19	checkedlist 67:17,20
California 14:18 16:17	California 14:23 49:21 51:12,15 53:2 62:16 65:21 69:4 77:1 83:7 86:22 92:8 96:19 106:6 107:13 121:15 122:23 127:3,4,6,11 131:23 133:9 144:19 145:2	cherry 160:22,23	cherry 160:22,23
call 191:10		Circle 70:19	Circle 70:19
called 89:24 116:25 117:15		circuit 85:22 86:9,13 87:22 175:18 176:6,11,19 177:2,7	circuit 85:22 86:9,13 87:22 175:18 176:6,11,19 177:2,7
calls 41:23 60:20 69:6 90:15		circumstance	circumstance

115:22	125:23 126:7,11,16	67:13 68:9 75:22	69:11 117:18 171:21
circumstances	126:20	79:20 117:6 131:24	completed
32:5 86:18 117:8	CNN	163:24 173:4 189:12	13:10 135:14
circumstantial	110:8	comes	complex
90:18	cobbling	36:2 116:11 157:16	35:9
cite	156:23,24	coming	component
35:19 93:9 124:23	code	20:10 51:10 63:13 84:5	65:14
184:10	53:4,24 57:3	89:14 153:14 173:19	comport
cited	codes	comment	48:14
140:15,21,23 141:9,17	54:2	164:18 188:9	con
141:20 143:9,16	coffee	commentary	95:16
cites	103:21	165:4	concept
139:23	cognizance	commentator	19:4
cities	8:18	22:11	conceptual
65:11	Cohesion	commented	20:5
citizens	73:3	153:1 187:12	concern
87:19 157:21 158:1,15	COIE	comments	151:20 158:9,17
citizenship	2:4 3:4	8:12	concerned
56:13 187:25	colleagues	commission	151:15,16
city	10:15 98:8 101:19	193:16	concerns
79:10 80:10,14	collection	commitment	129:20
civil	139:21	74:24	conclude
70:4 76:19	collections	common	92:4 139:11 177:21
clarification	17:22	45:11 63:6 92:19 101:8	concluded
170:24,25	collectively	144:12 150:17,20	119:24 137:25 163:18
clarify	155:8	153:12 156:25 157:1	176:1
55:13 56:5 58:18	college	160:20 190:23,25	concludes
Clay	35:11 153:22 159:24	191:1	137:5 140:13
5:8	186:6,6,10	commonly	conclusion
CLAYTON	colloquy	167:14	44:20 69:7 90:15 123:4
3:11	90:21 119:13	commonplace	123:8,21 125:3,9
clear	color	155:12	127:24 176:5
57:13 74:8 84:25 89:5	165:9	communities	conclusions
100:14 101:2 127:19	Columbia	79:8	138:14
128:8 150:14	2:14 193:21	comparable	concrete
clearer	column	169:24	47:1
57:15	174:18	compare	condition
clearly	combat	81:14	148:3
32:4 81:12 97:14 99:8	99:3	compared	conditions
103:5,23 104:3,25	combed	17:25 85:10 187:5	56:16
105:11	168:4	compares	conduct
Clinton	combination	187:9	51:11
117:9	18:22	comparison	conducted
clips	combines	81:25	110:2,11 140:17
8:12	17:13 43:24	competitive	179:18 180:12,20,21
close	come	35:21	183:13,16 189:6
47:14 67:14 92:16	9:21 26:3 40:6 51:9	complete	confidence

149:15 151:16,20	48:8	81:20	21:5 30:2 47:7,8 53:18
conform	constitution	convinced	54:10 58:12 59:3
96:14 186:16	19:15,16	56:1	62:9 72:1 80:4,13
conforming	consultant	cooperative	81:9 90:17 91:5,8
96:13	21:23	135:11 139:18,20,22	96:15 108:23 113:7
confused	consultants	139:23	121:24 122:6 125:22
35:16,24 36:18,22 37:2	21:18 45:13 105:6	copy	126:10 130:5 140:8
confuses	consulted	135:21 192:12,14	141:23 146:13 151:3
53:23	21:17,19,20 22:3	corner	153:21 156:6 158:4
confusing	consulting	127:16 136:6	163:23 164:11 169:22
55:9,10	22:12 24:7,10,10 105:7	correct	169:22 174:14 177:13
confusion	105:8 106:13	5:17,18,20,21,24 12:7	177:16 184:10 188:5
35:5 36:13 37:5,13	contains	14:22 32:16,17,19	189:18
Congress	122:15	33:6,18,24,25 39:22	couldn't
23:1	contemporaneous	43:7 49:24 50:2	59:20,20 60:18 87:19
congressional	67:7 68:23,24 166:23	54:15,16,19 55:21	148:23
35:21 40:15 41:3	contemporary	60:14 61:8 63:16,17	counsel
135:12 139:18,23	44:11 45:12 156:20	63:20 74:12 82:19	5:4 173:1,8 193:9
congressman	contentions	93:1,3,6,15 96:6	count
8:12 35:6 102:7	69:1	97:12 99:11 108:17	6:1 31:23 61:14 76:11
connotations	contest	108:20 110:5,23	131:21 149:18 174:18
190:16	110:18	111:1 115:8 122:24	counted
consequences	contests	122:25 125:6,12	26:3,8 38:17,24 39:3,9
145:14 146:25	95:7	131:6,21 135:2 136:9	41:21 61:15,18,24
conservative	context	137:14 144:20 153:19	counties
18:25 43:20 70:11 72:8	19:23 128:6,11	157:3 159:2,17,21	168:16,17
105:18	continue	161:7 163:6,10,20	Counting
consider	23:2	164:6 165:16 167:15	174:8
42:21 44:6 49:7 68:4	continues	167:24 169:8 172:8	country
86:9	96:19	173:13 175:5,19,21	22:20 96:18 117:13
considerable	contrary	176:21,23 177:19,23	124:3
39:12 43:25	101:22	178:7 180:7,9,11	county
considered	control	183:14,15,20 184:18	4:11 167:19 168:9,22
141:24 154:18,19	45:3 113:18,19 114:18	185:12,22 187:9	169:12 170:19
164:23 165:2 166:9	114:23 115:10 116:14	188:2 190:7 191:19	couple
174:19 190:2 191:15	117:17 166:6	193:5	41:5 147:9 178:16
considering	controlled	corrective	189:11
151:3	163:22	86:5,6,9,11	course
consistent	controversial	correctly	15:9,21 16:1 19:8,16
133:13 156:16,18,21	95:13	91:16	37:23 42:13 63:4
consistently	controversy	correlated	67:9 69:14 76:16
114:3	101:24 143:24	34:23 88:20	87:5 88:20 105:1
constant	convenience	corroboration	106:2,10,20 113:3
181:5	162:6	157:2,7,12,22 159:1	116:16 128:15 137:16
constituencies	convenient	cost	139:2 142:2 146:12
47:24	31:4,7,19,21,25 32:3	148:23 149:1	154:15 156:21 175:9
constituents	conveyed	could	178:9 183:11

courses 15:16,19,23	46:21 50:5,19 51:6,9 51:15,21,23 52:3,5,9 52:12,18,21 63:13 112:11,23 114:6,7 119:2 132:8 159:8 160:4 172:20,22 173:18,19 174:15 175:8,11 182:1	decades 21:17 79:10 101:19 decide 153:9 decided 40:21 decision 20:11 66:15,18,25 125:1,6,11 141:2 148:2,9,12 175:18	delve 137:12 170:17 Democrat 99:16 Democratic 22:5,6,24 95:12 103:10 107:16 108:4 115:24 116:5,7 155:22
Court's 125:6	12:3 25:24 144:7 177:4 181:1 182:8 186:11 186:12	decisions 76:15 140:24 143:25 145:6	Democrats 103:6 117:7 128:21 129:20 183:8
covered 142:12	dated 178:5	decision-maker 97:19 98:12 101:13 102:1	demographic 108:3
Crawford 4:11 121:15	day 4:17 26:15 27:24 29:7 29:8,20 31:6,17,25 32:2 44:10 61:5,15,20 62:1 67:10 131:25 132:4 136:4 143:22 162:3 183:3 190:8,23 191:2 193:14	decision-makers 67:8,10 68:24 69:1 81:8 90:23 166:24	demography 20:24
create 60:6 186:19	days 12:13 41:5 86:3	decision-making 152:17	demonstrate 116:10
criminal 127:4,6	DC 1:13 2:7 3:7 14:7	declared 97:14	demonstrates 112:23
critical 22:23 88:25,25 93:19	deal 47:22 72:2 80:14 119:16 120:21 128:18	decline 116:25 123:12	demonstration 48:16
Critics 70:18	dealing 56:9 119:17 120:19 129:5,6 137:20 142:4 160:23	declined 94:6	denial 137:7
cross-over 130:8	deals 44:11 70:11	deemed 25:22 26:9 123:18	denials 84:1
cumulative 166:3	dealt 71:13,17 72:20,21 73:3 73:7,20	deeply 101:1 170:17	denied 84:5,12 136:15,16
current 27:13,15,17,20 44:1,3 78:4 82:14	debatable 127:18	defendants 1:9 3:10 5:4 8:3 40:3 40:13,16 41:2,12,15 42:16 65:3 83:7,11,13 172:12	denominator 142:9 143:12
cut 56:8 69:18 160:21	debate 23:17 164:6	define 42:24 66:22 186:23	denying 85:25
cutting 160:25 161:2	debates 143:25	defined 76:7	department 3:13 5:9 51:5 79:13 83:15,17,21 84:15 85:1,4,11 89:7
cut-and-dried 54:6	Debra	definitely 164:16	departmental 14:2
CV 12:20 49:24 71:19 72:2 77:20,21,22		definition 143:10	departs 187:4
<hr/>		degree 162:11	depend 111:8
D 5:1			dependent 109:22 125:12
Dale 166:17			depending 36:20 76:10 112:5 177:12
data			depends

21:3 129:15	147:4,15	direction	131:5 157:2 159:4
depos	deterr	193:8	discussed
53:19	141:4	13:15 19:8,24 20:16	52:16 118:12 148:24
deposed	deterring	21:11,22,22 24:9 65:7	184:5
5:17,25 40:20	149:16	67:3 72:20 74:6 76:1	discusses
deposition	deviation	78:19 86:23 89:14	136:24
1:12 2:1 4:7 5:10,16	164:9,24 165:14,18	91:3,4 92:6 98:12	discussion
6:12 7:9 10:7,11,24	166:5,9,11	109:2,11,18 119:16	38:2 74:4 77:24 120:25
12:1 38:9 49:10	deviational	145:7 160:9 165:23	143:19 164:6
102:7 121:7 135:22	165:22	director	disenfranchised
168:11 171:7 179:1	deviations	21:25	147:18
193:3	67:7 163:9,12,13,18	disagree	dismissed
depositions	164:1	138:14 144:3	77:7
7:23 8:2 38:3 53:13	devise	discipline	disparate
54:5,13,20 55:11,12	152:1	16:24	81:10 84:20 85:9 156:9
55:19 56:3,5 57:8,12	diaries	discretion	159:25
57:15 84:22	17:16	53:16 54:7 55:16,18	disparities
deputies	difference	56:2,4 57:9,13 84:18	45:9,10 63:5,6 73:19
159:6	48:20 116:9	85:13 170:9	73:24,25 78:5 82:15
derived	differences	discretionary	92:15 108:18,24
78:19 79:18 81:18	108:18 186:5	53:13	134:17
deriving	different	discriminate	disproportionate
155:20	23:8 59:8,25 73:11	42:11 44:17 66:9 90:25	154:12
describe	81:23 82:2 88:4	discriminated	disproportionately
188:5	115:19 125:2 132:7	151:12	105:2 161:13
designation	140:1,2 144:8 154:9	discriminating	disqualify
14:2,2	155:13,14 156:6	85:15 154:1	56:17
designed	186:1,18 188:22	discrimination	dissatisfaction
98:12 99:3 116:9	difficult	4:9 45:1 67:4 69:22	117:12
128:18	53:21 97:3 128:11	70:9,12 71:10,14 72:3	dissertation
Despite	difficulties	73:4,20 74:1,11 76:4	13:6 17:19
120:23	87:14 88:19	78:3,10,16,21 79:15	distant
detail	difficulty	80:19,21,23 81:2,16	43:23
12:21 30:19,21 66:1	33:13	82:5,5,14,22,25 83:10	distinctions
88:3	digest	84:17,25 85:5 89:8,20	187:3
details	7:16	90:1,12 99:3 100:22	distinguish
62:11 73:16 77:11	digested	100:25 102:2,18	44:21
190:4	11:3	107:6	distinguished
deter	diminish	discriminatory	13:17,21 14:17 15:3
64:4,8	106:19	67:5 73:2 79:7 83:22	district
determine	direct	83:24,25 85:17 89:15	1:1,2 2:13,14 5:13,14
81:5 95:2 115:12	46:19 66:20,21 67:2,7	90:6,7 94:20 95:3	8:9 35:22 85:23
determining	79:6 90:18,20 97:18	100:12,17 109:1	176:13,14 177:1
108:25	102:1 103:19 104:15	154:17 155:2 156:12	193:21
deterring	105:24 107:5 122:6	158:12 176:3,13	districts
134:23 139:3,6	151:25 156:11,15	discuss	129:15
deterr	158:25 179:11		Division

83:17	down	3:1,1 4:1,5 5:1,1	57:19 65:19 94:12
DMV	5:23 8:9 9:21 54:3	earlier	95:16 113:13 118:19
28:15 53:7 55:14 58:12	81:24 87:12 97:14	108:17 120:9,25	118:21 138:2 143:1
58:16,21 85:2 89:17	174:11,21,22,22	166:19 181:25 188:24	144:13 147:15 150:8
89:25 173:16	dozen	early	154:17 158:12,14
DMV's	191:5	13:16 18:1 24:5 29:8	178:3,6 180:13 189:9
54:25	dozens	29:17,22 30:23 31:11	effective
Doctrine	6:1 185:11,12	61:3,4,6,7,8,9,10,12	127:17 128:2,3
73:3	Dr	65:9 71:12 104:20,25	effects
document	5:6 49:19 51:25 58:7	105:1 124:18	4:13 30:21 95:3,23
28:6 158:17 175:14	65:20,20 142:22	earn	139:12,14 142:19
186:13	draw	39:15,16	144:25 145:5 153:14
documentation	85:19 90:19,22	earned	efficiency
27:11,12 30:25 148:3	drawing	38:20,25 39:6,10	95:18
149:5 188:20	146:20	ears	Eighty
documented	drawn	92:16	38:18 174:2
124:4	146:20	ease	Eighty-five
documenting	draws	88:17	38:19
73:23	driver	easier	Eisenhower
documents	56:11 57:4	122:7 187:2	98:10 99:7
10:22 28:8,11 149:1	driver's	Easterbrook	either
doing	46:7 56:15,17 169:4	85:22 90:10 158:13	31:10 37:19 91:9 96:24
6:12 17:17 67:11 98:8	driving	easy	131:24 137:17 154:20
98:9,10 101:5 105:9	77:3	192:7	169:21
106:7 125:14 127:19	dry	ECF	elaborate
128:10 142:16 155:5	56:8	131:9	103:17
155:11 157:6 166:1	dual	economic	elaborates
188:7	74:2	16:14	184:12
dollars	due	economics	elect
39:7	147:5	16:15	106:6
Donald	duly	economy	elected
95:12	5:3	20:24	23:12
done	duplicate	Edison	electing
14:15 22:12 24:23 25:1	173:15 174:23	110:2,6	23:3
36:15 37:4,9 43:4	duplicates	editorial	election
60:5 70:6 71:9 81:6	58:16 59:5 174:8	75:2,6	4:11,16 8:20 9:2,6 13:7
81:24 83:8,19 91:21	durational	editors	17:21,24 19:6,25
91:22 101:12 106:12	161:15,23,25 162:17	75:9	20:22,25 21:1,10
133:9 135:15 153:21	during	education	24:17 25:17,20 26:6
154:1 161:9 191:13	12:10 183:13	8:7 33:12 79:11 82:16	26:10,15 27:24 29:7,8
192:3,10	Dwight	83:2,5 109:10	29:11,20 30:19 31:6
doubly	99:6	educational	31:17,25 32:2 33:17
174:21	dynamics	12:22 80:16	33:22 36:17 43:13,16
doubt	105:9	educator	43:18 51:3 52:17
39:2 57:11		23:6,11,11	57:20,21 61:4,19,25
Douglas		effect	63:19 72:24 73:2
20:20		21:5 48:10 57:17,18,19	93:22 94:5 95:17

102:11 103:8 105:9 111:24 113:10,15 114:1,24 115:19 117:15 118:20,20 125:23 126:11,17,20 127:18 128:2,4,8,14 128:17 131:25 132:4 133:19 135:12 136:4 137:14,15,21 138:10 139:18,24 143:22 147:12 183:3 189:5 190:8,19,23 191:2	92:22 93:2 emphasized 66:5 employed 193:10 employee 35:14 184:20 employees 187:20 employment 150:12 en 177:6 enable 79:2 86:19 131:21 enables 20:11 enact 151:11 enacted 57:25 94:7 96:21 97:11 135:5 180:16 enacting 47:24 encouraging 100:9 endeavor 13:11,12 energy 33:7,8 enfranchise 107:14 enfranchising 107:16 engaged 83:22 85:5 100:21 engaging 89:7,19,25 90:13 English 33:13 enhanced 153:25 enormous 20:23 enormously 174:25 emphasize	23:14 118:17,23,24 119:1 178:12 182:13 enter 68:20 entire 54:23 57:14 109:12 130:8 143:8 176:19 entirely 54:20 57:13 151:7 erroneous 111:13 error 58:8 62:7,8 110:23 111:6,8,13,17 112:2 181:22 errors 62:6 especially 186:5 ESQUIRE 3:3,11 essential 149:11 essentially 68:19 86:12 113:15 128:17,19 establish 151:4 158:10 162:11 established 109:20 111:20 151:22 estimate 38:16 41:10 60:19 110:24,25 estimates 111:10,25 estimation 82:3 174:6 et 1:5,8 evaluation 18:8 71:4 even 6:1 9:6 23:16 33:10 35:15 36:1,22 41:14 46:13 54:2 74:23 75:25 79:2 81:17 91:18 96:15 118:19	125:17 126:7 139:7 140:4,5 142:12 144:24 149:5 158:14 165:24 170:15 181:14 185:9 evening 26:4 events 45:2 67:6 156:20 ever 11:11 14:10 24:16,23 25:2,6 31:13 67:14 75:5 77:5,13 every 30:11,11,14,19 33:17 33:22 67:21 68:4 70:19 101:23 108:5 113:15 114:3 135:15 140:17 155:3,4 160:22 168:4 everyone 59:20 84:19 105:20 everywhere 117:25 181:19 evidence 4:15 37:25 47:2 66:20 66:21 67:2,3,7 84:16 84:23,25 85:18 90:18 90:20 92:3 97:19,23 100:20 102:1,17 103:19 104:15 107:6 107:20 121:23 122:15 123:18 124:21 125:18 126:13 132:19 138:19 138:21,22 139:13,14 142:18 145:24 156:15 157:11,14 158:25 160:16,19,19 evidenced 136:3 evident 87:24 exact 28:22 53:10 111:14 112:8,12 135:13 181:1 191:3 exacting
---	---	---	---

150:9	172:7	4:8,19 12:19,19 16:25	165:6
exactly	exemplary	30:11,14,14,18 34:3	extensive
16:3 33:6,19 53:6,15	92:21 93:5,10,10	37:12,20,21 38:13,14	17:23 21:23 30:24
54:11 83:12 95:1	exercise	38:21 39:1,4,7,11,11	76:17 92:9 120:24
99:5 111:4,7 112:19	169:13	39:15 40:16 41:10	121:23
112:20 176:7 184:13	exhaustive	42:17,21,24 49:3 58:7	extensively
examination	69:11	62:16 63:14,18,24	64:15 70:11,14 74:23
4:2 5:4 63:4	exhibit	64:3,7,11,14,23 69:21	92:11 125:18 126:8
examine	4:7,8,11,13,18,19,21	70:1,2,2,3 76:3,20	extent
63:23 164:19	4:24 49:7,9,10,17,19	89:6 91:12 111:12	10:19 53:18 72:21
example	49:24 50:1 71:18	118:9 134:4 145:2	90:14 114:7 123:7
20:13 25:23 35:10,14	74:9 120:16 121:3,5,7	162:20 172:13 175:20	external
35:19 43:11 46:7,16	121:9 135:20,22,24	176:12	89:4 153:15
68:12,14 70:13 80:18	146:6 168:10,11,13	expertise	extra
81:2 83:9 95:6	171:2,6,7,14 179:1,1	17:4,6,8 42:25 43:3	36:4
109:10 110:4,21	179:4,4,9,16,22 182:5	69:14 70:1,4 77:18	extraordinary
114:14 170:1 184:25	182:6 185:19,21	175:22	54:14 98:5,11
185:24	186:8 187:16	experts	extremely
examples	exhibits	8:3 38:1 42:16 51:1	133:11 169:25
72:1 74:15 75:21 79:14	178:16	63:10 65:2,9,17	eyes
79:20 80:21 81:15	exist	111:14 112:20 145:22	92:17
82:4 88:22 95:22	32:14 128:19 134:17	157:9,15	eyewitness
105:3,4 107:9,13	existed	expiration	106:16
124:3 153:16 167:13	154:17	25:24 186:12	e-mails
except	existing	expires	157:20
22:11 130:2	124:22	explain	<hr/> F
exception	exists	35:3 59:13 82:20 85:20	face
129:12 130:4 178:2,7	157:3	94:19 108:23 123:6	84:16 155:9
exceptionally	exit	123:14,16,17,24	facing
137:6	110:2,8,8,11,13,22,25	164:11 166:15	45:7 86:13 90:9 108:1
exceptions	111:3,15,17,21	explained	fact
34:19 170:4,7,13	112:18,23	48:12 123:15 174:20	34:16 47:5 64:17 68:4
excerpt	exit-polling	explaining	80:23 81:9 83:22
182:15	110:17	18:13 43:13	94:16 100:2,3 103:11
exciting	expect	explains	109:20 118:23 130:2
95:10	35:7 142:10	13:1	140:7 149:14,25
exclude	expense	explanation	150:20 165:20 170:4
77:8,10	150:10	116:19,21 117:19,22	170:8 184:6
excluded	experience	117:24 149:24	facto
76:22 77:14	22:2 23:6,6 76:16,17	explicate	31:12
exclusion	81:7 118:24 136:3	123:11	factor
77:16 152:21	143:21	explicitly	113:14
exclusive	experienced	67:11 102:10 149:20	factors
79:19	57:22	expressed	67:16 68:2,4,6,9,21
excuse	Experiences	18:2 48:3 67:8 68:23	83:4 95:4 108:16,21
32:8,10 185:25	4:16	extended	113:11,19
executed	expert		factually

123:2 148:7	187:19	162:2 181:18,20	focused
faculty	fee	43:7,23 142:22 143:7	
13:25 15:5 169:23	58:5	focuses	
failed	Feingold	67:2 156:1,5	
76:23 151:11	114:15,19	focussing	
fair	fellow	143:4	
7:1 21:1 39:6 59:1	105:6	Fogel	
145:9,12 178:12	felons	16:13	
182:13 185:4,10	48:7	follow	
fairly	felt	66:24	
46:3 47:14 64:15 70:14	22:15 109:5 155:7,7	followed	
105:15 153:13	165:6	189:17	
fall	fetch	following	
109:7	131:24	84:20 95:1	
familiar	few	follows	
27:2 28:12 46:22 81:22	6:9 33:3 42:20 43:4	5:3 116:3	
106:2 117:1 127:3,14	93:21,23 95:22 96:17	food	
135:25 137:2 138:5	136:21	149:22 150:4 151:22	
179:10 180:18	field	FoodShare	
familiarize	17:11 18:5 71:5	149:8,18,25 150:23	
186:20	Fifteen	152:13,15,15,16	
famous	41:20	footnote	
105:19	fifth	174:13	
far	175:18 176:6,11,19	force	
13:24 23:10 36:23 43:6	177:2,7	109:8	
60:7 77:9 84:24	figure	forced	
90:21 94:9 104:2	32:23 53:19	59:15 86:12 88:13 89:4	
126:20,21 127:25	figures	148:1	
152:2	8:7 167:7	Forecasting	
fashion	filed	18:19	
139:7	9:12 77:8,10 90:8	forecasts	
favor	171:23	20:21	
47:12 96:12	files	foregoing	
favored	50:25 51:4 148:11	193:3,4	
45:25 180:5 181:9	fill	forgot	
favoring	32:25	141:21	
184:7	filled	form	
favors	98:23	47:6 51:12 52:21 55:22	
129:8	final	58:22 63:15,21 82:8	
favor/oppose	159:21	89:9,22 135:9,13	
180:1	finalist	141:5 175:8	
features	70:18	formally	
114:11	financial	113:23	
February	193:11	formed	
9:17 94:11,13 172:8,15	find	9:17	
175:12	46:3 64:13 107:20	former	
federal	139:3 143:16 160:22	8:13	

forms 45:11 63:7 184:17 185:22 186:21	58:3,4,20 59:6,14 60:10 84:6 86:19 97:4,11,15 147:25	113:17 114:4,7 115:21 gave 67:25	193:5 gives 70:4
forth 23:24 24:2 45:14 57:3 69:1 113:20	148:15,19 149:4 173:24,25 174:3,6,10 174:17,19,22 188:19	108:10 130:21 general 3:12 5:9 50:4 57:21,21 62:16 70:19 103:7 116:24 119:15 137:14	37:23 62:15 150:7 glance 10:24
forums 143:25	188:22	generally 17:11 28:14 33:14 46:14 58:11 81:22 95:2 111:20 116:2 117:7,9	glanced 8:8 119:17 go 5:15 6:11 16:7 17:15
found 54:8 121:22 126:9 176:13	Friday 26:5 132:1	19:14 26:10,21 32:20 front 34:14	19:14 26:10,21 32:20 32:20 47:7 53:11
foundational 165:11	friends 10:18	57:16 59:12,12,16 generation 16:22	57:16 59:12,12,16 60:2 65:25 68:2 81:4 86:7 87:18 101:1
founders 105:17	fulfill 35:12	generic 46:14 48:14 113:14 117:24	117:9 124:1 131:5 144:10 150:6,8
four 13:25 27:25 74:14 75:17,20 79:20 105:23 141:9,17 152:8	full 13:15,16,25 15:1 50:15 66:6 118:18 136:13 136:14 137:5 141:7 141:11 147:23 154:6 154:10	generically 49:1 71:7 117:11 George 21:21 24:11	163:25 164:15 165:7 168:16,23 185:13 188:20 192:2
fourth 85:21 86:13 87:21	fully 104:5	Georgia 187:5,19,20,24	God 182:7
frame 183:14	full-time 15:5 23:11	Gerald 1:8 5:12	goes 39:17 43:9 53:10 78:5
framework 156:17,19	fundamental 165:1,4 169:10,13	gerrymandering 77:1,2	93:20 101:18 149:12
frankly 16:5	fundamentally 188:22	getting 7:11,22 22:15 51:4 56:17 97:4 98:20	151:14 177:13
fraud 47:2 60:9 64:9,14 68:16 120:9,10,21,25 121:21,23 122:1,9,14 122:15 123:19 124:3 124:22 125:14,19,22 126:1,5,10,14,19,23 126:24,25 127:1,12 127:18 128:2,4,8,14 128:17 144:11 149:16 151:16,21	further 144:10 162:20 170:23 170:25 192:6	120:13 156:8 157:17 167:17	going 9:18 31:3,5 32:22 33:8 34:3 35:15,16 36:1
fraudster 87:17	future 101:9	giant 16:13	38:7 43:24 45:5,6 49:7 59:21 67:10
fraudsters 87:16	F.D.R 19:1	giants 16:10	75:11 83:3 85:1 86:24 88:2 89:5
fraught 58:7 85:12	<hr/> G <hr/>	give 5:19 6:14 30:14,21 GAB 50:22 153:11 157:20	91:19 94:22 95:7 100:24 102:13 103:1
free 54:3,23 55:21 57:7,25	186:15	55:4 68:9 69:24 76:3 104:5 116:19 160:13 162:6 164:17,18	104:21 106:21 109:5 109:7,24 113:12
	gain 65:18 101:15	given 44:24 56:2 63:13 66:14	116:1 117:6,13,13
	gained 116:13 166:6	84:12 90:22 119:25	118:19 119:11 123:12
	gap	126:18 175:7,14	125:10 130:20 135:20
			139:2 141:6 142:10 143:11,15 160:11
			166:16 168:16 171:2 171:19 172:4 173:9
			174:24 175:9 177:2 179:19 187:14 191:21

192:2	8:12,13 102:8 103:7	heading	hereunto
golly	104:13,18 106:5	121:25 143:18 168:23	193:13
67:11,13 68:15	166:25 167:2,5	169:3	Here's
goMilwaukee	groundswell	health	168:10
4:18	115:6	82:18 83:5	herself
gone	group	hear	186:21
76:8 81:24 119:13	110:7 133:1 161:12	24:3 150:20	hey
154:8 156:14	grousing	107:18 162:14	58:4
good	99:16	hearing	high
5:6,7 6:12 45:21,23	guaranteed	77:3	9:5 159:6,10,15 190:19
115:23,23 116:1,4,5,7	62:3,4	hearings	190:20
116:8,12,17 117:20	gubernatorial	91:5,7 92:9	higher
117:22,25 130:21	110:17	heart	9:6 65:6 116:2 137:21
134:16 154:3 160:19	guess	6:24 149:12 151:14	150:3,4
162:9	16:23 106:22 133:15	heavily	highest
gosh	145:18 183:18,23	36:9 37:2 84:2	94:16
14:18 21:19 38:15	guidelines	Heights	highlight
153:9	66:24 67:19	66:25 67:15 69:3,9	98:25 107:11 165:14
gotten	guides	156:17,19,22 164:22	166:5
70:23	55:3	held	highlighted
government	guy	2:1 20:18,22 23:5	65:9,17 74:7 86:1
35:14 50:21 83:14	106:15	77:24 91:7	91:13 107:7
166:7 170:10 182:2	<hr/> H	help	highlighting
184:20 187:1,20	hand	71:15,18 102:13	78:17 127:6
governments	181:20 193:13	helped	highly
92:13	hands	154:2	18:15 34:23 124:12
government-issued	170:10 189:7	helping	himself
180:2 187:6	happen	24:23 102:10 103:6	100:21 186:20
governor	177:12	helps	Hispanic
86:11 90:23 155:25	happened	67:12 96:22 166:15	65:14 84:9 159:9
governorship	48:11 88:10 145:14	here	Hispanics
45:4	happy	5:10 9:9 12:9 31:5,10	63:2 78:4 84:6,10
graduate	181:2 189:21	45:18 55:7 62:19	85:10 87:9 107:15
15:13,15,20	hard	67:14 85:19 88:15	114:6,8 134:22 150:4
grain	48:7,10 152:1	90:24 107:17 112:6	152:8 153:4 154:3,13
22:5,22 23:16	harder	114:25 120:22,23	155:19
great	34:24,25	122:3 137:25 138:12	historian
12:21 14:14 46:11	Harvard	139:23 149:12 153:10	14:9 16:14 24:10 44:4
114:1,2,2 165:3 192:4	13:3 15:21 16:19,19	153:12 155:18 158:9	44:6,8,9 56:6 66:14
greater	hash	160:10,24 161:1,14	69:15,15 76:9,14
138:25 139:14 144:24	106:22	161:18 171:1 174:2	124:16
150:18	hate	178:1 179:6 185:16	historians
greatest	12:23 22:25	187:3,6 188:10,17	16:6 69:20 76:13,13
16:13	head	hereby	124:5
greatly	78:22 79:18 158:7	193:3	historical
153:24			17:13 18:4,11,23 43:5
Grothman			43:9 67:5 69:19

80:20	16:8	185:24 186:2,7 187:1	108:15
historically	Hun	187:4,6 188:19,22	imagine
78:23 82:10	23:2	189:6	27:11 153:20
histories	hundred	idea	immediately
17:16 81:22 82:2	54:18	60:18 129:4,10 148:22	40:6 136:14
history	hundreds	151:4 152:4 170:6	impact
13:1,5 15:12 16:7,11	55:19,20,24 59:1,4	184:7	21:2 67:5 81:10 86:21
16:25 17:1,13 18:7,9	I	identification	106:20 113:5,7
18:9 20:19 43:1,25	ID	4:14 20:13 21:7,11	151:17 155:2,6,7
45:1 69:18 70:1	4:25 6:3 8:15 25:24	25:19,21,22 30:22	159:25 164:14 190:10
71:13 72:11 78:2,8,20	26:9,13,19 27:9,16,18	37:14 42:6,9 44:15	impacted
79:9 80:23 82:13,24	27:19 28:9 29:1 33:2	45:12 48:19 49:11	160:5
109:21 122:17 124:5	33:4 34:17,25 35:1,8	59:14 63:7 84:2 96:4	impacting
124:9,10,11,12,17,19	35:10,11,14,17,24,25	96:9 109:13 121:8	115:13
191:14	36:5,13,18,19,23 37:5	131:3 134:24 135:23	impacts
hoc	45:3,15,19,25 46:4,12	136:2,17 141:19,25	158:15 160:17
101:9	46:14,15,17,24 47:6,8	143:23 144:12 168:12	impeachment
hold	47:13,19,25 48:4,15	171:8 179:2	117:8
91:5	48:22 53:8,11,15 54:4	identifications	impediment
holding	54:12,14,23 55:5,21	140:6	47:9
20:2,4,8 115:3 117:9	57:5,7,16,23,24,25	identity	impersonating
home	58:20 59:6,14,19	56:13,19 60:3 126:6,20	127:2
31:2 32:18 191:18	60:10 62:22 63:16	126:23 127:1	impersonation
honest	64:4,8 86:19 93:8	idiosyncratic	68:17 120:9 124:22
73:1	94:8,11 96:12,18,21	129:21	125:19 126:5,14
Hood	96:23 97:2,4,11,15	IDPP	127:7,10
51:25 58:7	99:19 102:12 103:5	57:10 59:16 87:14 88:2	implementation
Hood's	103:14 104:19 105:12	91:3,6,13,19,21	148:3
119:20,21 187:11,12	106:5 108:6 109:12	172:19	implemented
188:4	119:6,8,10 121:16	IDs	87:7 146:14
host	128:3,16 131:20,24	7:22 35:5,11,15,23	implicated
62:22	131:24 132:3 137:19	36:1,9 47:3,16 58:3,9	80:11
hot	138:2,15 139:4,12	58:12,15,16 59:10	implicating
95:7	140:10 141:3,4	84:6,12,12 139:1	165:8,24
hours	142:11,13,25 143:5,9	143:15 149:6,22	implication
33:11	143:13 144:9,25	150:6,9 151:22 152:3	83:4
house	145:24 146:14,18,24	152:7,9 173:16,23,24	implications
18:12 19:23 20:3,4,9	147:5,7,19,25 148:4	173:25 174:1,3,18,19	81:8 164:19
22:1 24:15 43:12	148:15,23 149:18	174:19 181:17 184:10	important
117:10 165:10	150:23 152:2,18,25	184:18,20,21,25	30:13 149:4 166:14
housing	153:6 167:14,21	185:2,5 186:10,16,23	169:7 186:24
82:17 83:2	168:1 169:3,13,20,23	187:20	importantly
huge	169:25 170:3,9,16,19	illegal	46:13
21:10 69:18 184:19	174:6,17 176:2 178:2	165:19 166:13	impose
human	178:7 180:2,13 181:9	Illinois	154:12
56:9	181:13 182:3 183:2	40:14,14,17	imposes
humanities	184:9,11,15 185:22	illustrate	36:4

impression 119:16	independents 183:9	133:3,20 145:7 147:20 172:17	176:3,13,15
inaccurate 124:12	Indiana 121:16 122:16 137:17 137:18 142:23 187:5	informed 18:24	intention 23:18,22
Inc 1:5 5:12	Indiana's 122:24	informing 50:6	intentional 4:8 67:4 69:21 70:9,12 71:9,14 72:3 73:20
include 15:17 138:25 139:8 185:12	indicate 68:25 110:22 112:16 130:11	initial 8:15 49:20 51:7 172:16 185:18	74:1,11 76:3 80:18,21 81:2,5,13 85:5 89:8 89:19 90:1,12 100:21 100:25 102:2,17 107:6
included 173:23 179:21	indicated 54:5	initially 87:7	intentionally 44:16 85:15 100:12 151:12 153:25
includes 15:14 143:12	indicates 35:20 98:15 130:8 145:8	initiative 86:6	interest 13:2 16:6 97:17 101:18 113:20 193:11
including 42:14 45:3 75:20 117:15 150:9,13	indicating 66:24 139:6	insight 65:18 152:16	interesting 46:20 95:11
income 39:4 82:16 83:4 109:10 150:10	indication 150:14	insignificant 138:15	interests 63:25
incomes 39:5	indicative 59:19	inssofar 65:1	interlinedated 122:4
inconsistencies 65:23	indirectly 19:8,10,11	instance 108:6	internal 157:20
inconsistent 153:18	individual 50:25 53:21 54:9 83:14 84:8 90:17 94:23 95:24 114:24 156:2 172:18,20,22	instantly 133:21	International 18:19 75:7
incorporated 18:10 176:22	individually 155:6,7	Institute 1:4 5:12 14:18 16:18	intervene 80:15
increased 64:25 95:20	individuals 35:21 54:18 83:19 85:25 94:22 141:20 143:22	instructions 55:5	intervention 79:13
increasing 149:15	inference 90:22	intend 8:1,4 29:20,22 31:2 52:21 162:19 163:3	interview 52:19 104:8 150:11
increasingly 190:25	inferences 85:19 90:19	intent 29:23 42:10,18,19,22 43:3 44:15 62:21,25 66:7,9,10,12,14,16,19	Inter-Disciplinary 18:9
incredible 167:11	inferring 158:23 159:14	intimate 66:22 69:17 73:7	intimately 106:10 109:19
incredibly 150:8	inform 19:22	intervene 76:14 85:19 87:7 90:19,25 91:14,23	intricacies 36:23
incumbency 114:19,23	information 7:12,13,18,19,20,21 8:6 9:21 46:19 75:7	introducing 93:20 95:1 96:11 101:3,5 106:8 107:22 109:1 129:22 133:12	introduced 164:4
incumbent 114:19	indeed 87:16 89:2,14 91:25	introducing 145:19 149:12,14	introducing 164:23
incumbents 115:1,2	independent 125:14	inundated 150:15 151:9 155:5	involve 155:11 156:1 175:25
			involve 68:11 88:2 115:1,2

involved 8:14 10:20 11:13,20,22 11:24 21:6,13 22:10 23:20,22 38:14 50:2 53:16 55:16 57:9 75:11 78:23 80:11 85:15 95:4 96:24 102:8 103:25 104:4 106:11 126:6 127:7,9 127:12	66:7 item 49:18 itself 148:22 J 1:12 2:1 4:2,9,19 5:2 16:17	58:21 148:14,14 173:17 174:7 jump 101:23 jurisdiction 168:5 jurisdictions 167:25 justice 3:13 5:10 79:13 121:20 125:13 158:13 justification 144:14 justifications 45:14 68:12,22,25 104:24 161:25 162:4 162:13 justified 47:1 150:5 K Kawski 3:11 4:3 5:5,8 49:9,14 49:16 76:6 77:25 joined 107:1,4 121:5 123:5 130:22,24 135:21 168:10 171:5,11,13 182:17 192:1,6,9,14 keep 7:11 160:11 Kennedy 21:21 keys 18:12 19:3,7,23,24 20:1,9,14,17 21:2,4,9 24:15 43:12 kind 6:21 21:12,16 22:16,16 23:3,8,9,10 33:2,5 52:19 60:9 68:20 69:15,19,25 71:22 88:23 95:15 115:3 122:4 126:22 132:3 145:24 164:19 kinds 34:20 68:25 96:23 113:7 132:7 156:6 170:4	Kleppner 16:21 knew 91:18 know 5:16 6:9 7:3 10:3,14 11:11 12:3,16,19 13:24 14:5,9 16:12,21 16:24 19:12 23:1,4,11 23:13 24:5,19 27:1,4 28:14,14 35:4,5,7,17 37:8 39:12,19 41:13 42:23 43:16,25 47:15 48:7,18,23,23 50:12 50:18 53:18 54:11,11 56:6,7 57:21 58:6 59:23 60:9,23 61:10 62:5,11,12,19 67:11 67:20,22,24 68:15 69:11,13,25 71:22 75:10 77:6,9,11 80:4 80:5,24 82:1 83:8 85:1 86:4 87:15 91:20 92:6,11,14,16 92:17 95:1,11,20 96:11,22 98:6,7 100:16 101:20,21 103:4,9 104:2,24 105:23 106:22,22 107:12 108:2 110:19 111:2,6,19,22 112:7 112:10 114:25 117:11 117:21 118:14,18,23 119:7 120:9 123:3,9 123:17,25 124:18 125:15,16 128:5 129:6,8,12,16,19 131:8 132:6,25 134:8 138:7 144:18 147:17 147:19,21 148:24,25 150:7 152:11,24 153:24 157:8,25 158:5 159:11,16 160:7,21 161:18,24 162:3,5 165:24 168:4 168:14 169:19,23 171:15 174:24 176:24
--	---	---	--

177:1,12 179:19 180:10,24 181:3,13 181:16 182:21 183:23 185:13 186:14 188:3 188:7 190:10,14 191:10,20 knowing 30:19 59:24 87:15 knowledge 92:19 150:17 known 19:13 87:13 90:6 91:9 knows 129:7 189:4 Kousser 16:17	38:9 42:9 45:3,16 46:17 47:6 48:9,11 53:3 57:16,24 68:12 68:15,22 69:2 73:18 84:2 88:17 91:14 93:8 96:4,9 97:13 98:5,12 99:11,16 100:11 101:10,12,13 102:12 121:16 122:24 123:3,18 131:16,19 137:19 143:5 145:23 146:24 147:5,7,19 148:4,25 149:21 150:15 151:17 152:13 153:19 154:9 158:12 161:8 163:15,17 167:20 168:19,19 169:25 175:18 176:2 178:2,4 179:17 180:19 184:11,15 187:4 188:6,9,18 189:7,8,12 laws 27:1,3 30:22 64:1,4,8 93:20 95:3 96:18 102:9 103:14 108:6,7 108:25 109:18 118:18 118:21,24 119:11 128:16 132:3 138:2 139:5 140:10 142:25 144:9,12,15 146:19 154:18 163:19 165:9 165:17 166:15 168:18 178:2 187:4 188:9 lawsuits 90:8 lawyer 12:9 77:12 123:13,25 146:15 176:10 lawyers 10:3 lay 66:23 leader 93:13,16 106:4 118:5 118:10,16 leaders	45:15 67:23 leading 18:4,18 45:2 leads 63:4 84:20 leaped 66:2 learn 9:4 least 41:19 47:19 59:16 84:3 84:16 87:23,25 100:23 119:3 134:17 141:24 191:14 led 60:9 Lee 21:24 24:13 left-hand 127:16 legal 39:19 56:13 69:6 77:18 90:15 123:4,8,11,20 123:24 125:8,10 127:23 176:12,17 177:1 legislation 66:13,17 93:9 106:11 130:18 156:12 164:5 164:23 legislative 17:16 40:17 42:17,19 42:22 43:3 67:23 91:14,23 92:7,7 101:5 106:3,7 107:22 155:11 156:1 legislator 166:22 167:3 legislators 47:23 67:23 106:9 129:7 133:5 156:2 165:5 legislature 44:16 45:4 48:5 90:24 91:2,5,25 92:5 96:21 97:5,11 129:23 130:8 132:21 144:22 145:6	145:19 149:20 150:22 151:11,12 152:11,12 152:17 153:8,9,11,15 153:17,21 155:14,21 155:22 164:4 181:23 182:3 legislatures 106:12 155:13,24 legitimate 35:17,25 length 184:6 less 33:12 66:21 93:9,10 114:6 141:22 143:23 letter 133:2,6 Letters 17:16 let's 66:3 71:21 86:15 98:17 108:10 124:1,19 130:22 135:17 161:14 185:13 189:11 190:17 level 94:23 95:24 111:9,9 116:2 118:15 levels 115:25 116:6 134:15 139:3 liability 90:9 license 56:11,18 57:4 167:22 168:2,23 169:4 170:11,20 licenses 46:7 Lichtman 1:12 2:1 4:2,7,9,20 5:2 5:6 49:10,19 121:7 135:22 168:11 171:7 179:1 188:21 light 101:11 176:16,17 limit 44:23 63:1 67:12,25
--	--	---	---

87:8	local	11:2 12:18 17:22 35:4 39:16 43:10 47:20 53:16 54:7,7 55:15 57:9 58:15 60:22 71:24 76:8 105:19,24 117:5,12,14 120:5 124:15 154:4 158:20 170:9 179:6 180:24 181:18 187:1	46:11 47:16 48:24 128:22 130:17,17 143:12 144:11 173:23 181:16 184:7
limitations	52:3 80:3,5,16 92:13 187:19	making	22:21,25 31:23 101:22 119:10 138:15 167:7 187:18
138:12	lodge	manage	61:12
limited	86:24	manifest	119:12
17:4 34:18 54:20 105:22 137:11 146:17 153:7 164:21	long	manner	163:15
limiting	16:2 20:18 21:16 24:18 33:11 71:22 73:1 87:25 105:12 177:16	manual	53:9,14 54:11 84:19
91:1 104:6 151:18 155:18	longer	manuscript	17:15
Lincoln	93:5,16 118:10,15 157:3	March	180:21
20:19	long-time	margin	110:23 111:6,7,13,17 112:2 181:21
line	98:6	Marines	186:3
107:18 111:23	look	Marion	4:11
lines	36:20 45:24 51:5 54:10 55:13 56:7 60:17 65:8 66:3,14 68:18 69:10,12 71:1,18,21 85:18 90:17 94:21 95:24 98:17 101:8,21 106:8 121:9 132:8 135:24 136:5,10 138:1 142:15 145:20 147:15 155:12 156:7 156:19,20 158:8 160:9 168:13 170:2 170:22 171:14 177:3 179:4,5 182:5 184:8 184:13,24	Madison	16:18
line-by-line	looked	3:15 52:18 65:10 104:21 161:5 177:22	mark
81:25	17:21 22:17 26:17,19 36:25 45:17,18 51:2 52:2,5 54:25 65:2,7 66:2 80:25 87:5 89:13 113:24,25 114:1,12 134:9 144:23 145:22 168:15	magnitude	121:5 171:5,9
link	looking	165:14	marked
156:11	62:21,24 66:1 68:12 78:1 80:22 96:11 108:12 112:6 115:14 115:17 124:19 126:8 130:25 132:13	mail	49:10,17 121:7 135:22 168:11 171:7 179:2
list	looks	mail-in	markedly
25:18 50:1 93:22,24 126:3 185:21	178:22	34:6	187:4
literacy	lot	main	marks
86:3		24:9 163:21	149:3
litigation		major	Marquette
39:14,17 86:14 87:20		12:25 13:1 19:2 24:1 57:21 76:12 79:10 110:17 118:20	4:21 38:9 178:24 179:9 179:17 180:19,25 181:6
little		majorities	marriage
38:12 48:10 102:13 108:10,16 112:13 118:3 120:8,10,12 128:11 131:18 132:18 139:11 144:10,13,17 164:5,10 170:17,23 178:19		46:25	167:22 168:2,23 169:7 170:11,20
live		majority	married
79:8 92:13			167:17
lived			
25:8			
lives			
92:19			
living			
152:11			
LLP			
2:4 3:4			
load			
15:4			

Maryland 22:24 29:3,24 161:19 161:20 191:17	means 71:2,3,7 170:22 181:14 185:13	mentioned 10:20,23 19:3 24:13 28:1 38:8 48:13 56:20 57:1 62:18 80:2 102:6 113:20 132:23 191:17	40:6 57:12 66:19 79:21 131:16 145:21 171:10 190:13
material 8:16 11:1,3 12:18 63:10 132:24 189:25	meant 56:21 107:16 128:9	minimal 59:24 138:2	
materials 37:25 41:1 87:1	measure 91:11 94:20	minimum 181:22,24	
mathematical 17:14 18:10 20:6	measures 48:6 62:23 82:15,21 83:6 88:23 94:3,7 165:15,20,23	method 31:19 127:17 128:2,4	minor 87:23 130:4
matter 50:5 53:14 66:13 70:5 70:7,8 88:3 110:9 150:24 151:1 163:23	mechanical 68:3	methodological 18:6	minorities 34:21 36:6 42:11 44:17 44:24 45:10 63:1
mattered 48:17	mechanics 19:7	methodologies 13:5 15:22 16:7,11 18:11,23 43:1	65:5,8,19 81:10 83:3
matters 15:17 30:23 151:2	mechanism 97:1 147:24	methodology 13:2 15:23	87:8 88:19 90:25
maverick 22:5,22	mechanisms 28:22 163:14	methods 17:14	99:4 101:4 103:1
Mayor 10:25 11:6,12	medical 56:16	microscope 166:1	105:2 108:19 113:16
Mayor's 65:20	medication 6:21	mid 148:14	115:18 147:5 150:17
McCarty's 119:14	medicine 6:24	middle 118:3	150:18 153:14 156:9
McGovern 21:21	meet 67:17,21	midterm 57:22 117:7 118:20 119:4,6 135:16	156:13 181:13,14,15
McGovern's 24:11	meetings 106:15,18	might 10:4,19 32:14 33:12 35:15 37:16,17,18,23	minority 34:23 36:9 37:2 41:13
mean 9:11 17:2 24:22 28:7 34:13 38:22 45:20 50:22 52:25 53:5 61:10 65:25 66:10,10 70:25 73:13 76:21 77:11 79:23 83:8,13 86:20 90:2 101:14 110:14 115:4 116:22 123:2 124:17 126:25 133:15 147:6 148:23 149:12 160:11,18 176:24	member 15:5	midterm 56:17 58:3 62:13,13 65:1 113:9 115:11 119:7 130:21 160:23 168:3,15	64:24 65:11 67:12,25 94:25 104:6 108:3
meaning 93:13 96:5 174:18	members 83:14 106:9,12 155:14	military 185:24 186:2	112:25 115:12 129:5
meaningful 186:5	memoirs 24:11	million 38:20,25	139:9 150:1 151:18
	memorandum 86:10,15,16	millions 39:7 140:9 158:3	151:18 161:13 181:15
	memories 106:10	Milwaukee 52:9 65:10 80:10,14 104:21 168:22 169:12	misread 189:19
	memory 34:13 45:21,23 58:25 81:20 188:8,16	modern 170:7,19 175:14 177:23	missing 143:6
	mention 34:6,11 76:16 78:22 82:13	mind	Mississippi 74:2

47:5	municipality	145:13 148:22 158:18	104:20
moment	111:23	162:1 184:14	Nobel
12:16 44:22 75:23	municipal-level	necessary	16:14
179:20	51:14	31:8 64:22 66:21 162:2	nondriver
money	N	165:7	173:16
23:14 150:7	N	need	nondriver's
Monroe	3:1 4:1,1 5:1	6:12 7:4 47:1 58:3 94:2	58:12
127:4	name	106:25 158:11 179:14	none
month	5:8 27:7,8,9 35:6 75:10	190:22 192:11,14	20:16
6:4	103:20 105:6 110:11	needed	nonexistence
months	names	36:19,19 157:16	126:18
86:8	171:16 172:4	needs	nonexistent
moon	narrative	22:19 25:13 162:8	126:6
152:11	68:8	Negro	nonfiction
moreover	narrow	71:12 72:11	70:19,20
139:7	69:25	neither	nonfree
Morgan	narrowly	193:9	174:22
16:17	42:24	never	nonstate-sponsored
morning	nation	10:3,14 23:5,5 24:5	82:24
5:6,7	72:7 96:4,9	25:8 38:17,24 39:3	nonstrict
motion	national	40:20 48:15 62:4	132:3
77:8	18:17 19:2 70:18 76:12	69:10 70:22 89:3,24	nonvoters
motions	93:13,16 118:5,10,15	118:12,14 191:23	141:9,16,24
77:10,12,16	167:7 183:24 184:2	new	non-Hispanic
motivation	nationally	7:12,13,18,19 9:17,20	150:2,3
44:23 66:12,16 69:17	48:21,25 105:5,25	9:22 11:2 57:15	non-official
98:16 101:17,21	116:13,18 167:7	86:18 94:3 95:12,13	184:21 185:2
156:10	nationwide	157:16,17 174:9	normal
motivations	124:24 140:9 146:17	189:6 191:22	33:21
101:2 155:12	146:21 183:19	newly	normally
motive	nation's	173:15 174:17,19,23	28:23
156:7	124:4	newspaper	North
Motor	nature	52:11,15	11:21 13:9 46:21,22
51:5 83:17 84:15	17:17	next	47:5 160:15 165:25
move	navigate	13:11,12 29:16 93:12	Northwest
86:6 166:16 177:14	109:12	112:22 127:16 136:20	3:5
movement	Navy	163:8 171:2	notarial
19:1 43:20 70:11 72:8	186:3	nice	193:14
moving	NBC	20:17	Notary
13:14 84:4,21 167:11	110:9	Nichol	2:14 193:1,20
181:23 191:4,7	near	1:8 5:12	note
multiple	130:17	night	67:9
127:13	necessarily	175:16	notes
municipal	33:7 35:7,16 48:14	nine	11:25 192:2
51:21	59:18,18,21 68:1	45:22 76:11 139:10	nothing
municipalities	69:12 100:23 117:6	185:5,7	11:18 21:11 39:15,18
79:5	119:11 129:17 130:12	nip	52:14 66:2 68:3

80:17 110:14 128:16 128:17 149:14	127:23 135:9 obsolete 144:7	83:9 183:2 184:8,9,18 186:25 officials 7:24 25:17 55:14	131:12 132:8 133:8 133:15,23 134:8,11 134:19 135:3,17,19 136:12 138:18 140:18
notice 2:12	obtain 26:18 28:21,23 30:6 32:6 52:20 55:5 56:10 147:25	off-year 52:2 57:20	141:6,15 142:6,20 146:5,13 148:13,18
noticed 110:1	obtained 55:20	often 56:8 170:15	149:3,7,13 153:3 154:7,21,24 157:11 158:5,25 159:4,22
notion 153:25	obtaining 26:14 27:23 53:8 54:23 57:4 167:22	oh 16:2,12 25:5 32:22 38:15 41:17 49:22 54:11 67:19 72:15	161:4,22 162:19,22 163:8 164:11 167:4 167:13 169:18 170:14
nowhere 23:13	obvious 88:16 153:13	77:10 87:22 94:3 96:13 107:1 119:21 131:12 132:15 152:6 153:9 158:2 171:16 192:7,13	171:2,4,16 172:6,25 173:3,6,9 174:1,5,16 175:2,7,11,15 176:1,8 177:4,25 178:8,12,15 179:13,23 180:1
no-cost 148:2 149:5,6	obviously 21:3 46:21 73:3,22,24 79:6 81:11 82:24 106:19 113:12 114:6 135:4 162:8 163:22 166:2 186:3 188:22	Ohio 11:23,24	181:7 182:13,20,20 182:24 183:12,18
no-excuse 61:8	occur 163:19	okay 6:2,5,11,23,25 7:15,18 9:16,24 10:12,22	184:4 185:16,18,21 186:6 187:13,17,24
number 5:13,17 27:4 40:8 42:15 46:5,25 59:18 59:25 63:15 107:9 112:12 122:2 129:18 131:9 138:25 140:5 147:20 153:7 157:25 158:6,8,15,18 163:24 163:25 165:17 174:1 174:10 179:24 184:3 185:3 186:22 188:25 189:1,2 191:3	occurred 48:9 120:1	11:17,19,25 12:3,13 12:18 13:10 14:3,8,15	188:3,11,14 189:11 190:3,5 191:25 192:4 192:7
numbering 121:25	occurring 122:16	14:20,23 15:11,16,25 16:23 17:5 19:10 21:13 24:16 25:2 28:20 29:17 30:1,3,13	old 17:20 23:21 72:22 105:15
numbers 35:20 58:23 72:15 129:6 175:3,4 183:11 183:25	October 4:22 72:16 157:22 179:18,18 180:23 182:11	31:9 32:13 34:11 35:3 38:5,12,20 41:7 42:2 50:4,9,11,17 51:11,20,24 52:20,24	once 25:5 34:1 75:6 91:9
NW 2:5	offer 162:19 163:3	53:2 57:16 61:2,23 63:24 64:11,16,19 65:4 66:3 72:5,19,23 73:15 75:17 76:2	one 1:4 5:11 8:13 10:2 11:21 13:8 18:17
<hr/> O		77:15,19 78:13 82:12 85:7 88:9 89:12 97:16,24 98:22,25	20:17 23:16 25:10,18 28:21 30:6 33:3 35:9 36:21 37:24 38:3,10 48:18,20 49:7,18 52:16 53:10 54:10 61:12 62:13 65:9,18 68:4 70:13 73:10
Obama 117:4,5,14	offered 25:25 129:17	102:21 104:10,12,17 104:22 109:25 112:15	75:9 76:23 77:8 82:7 85:19 88:5 90:22
object 6:16 89:9	offering 9:18 37:12	112:22 113:22 115:16 118:2,13 119:5,18,23	93:21,23 94:2 96:11 96:15,16,17 101:20
objection 41:23 55:22 56:23 58:22 60:15,20 63:21 69:6 73:11 76:5 82:8 86:25 89:18,22 90:14 123:1,7,16,20 125:8	office 3:14 22:4,17 23:5,19 26:5 60:2 188:21	120:4,8,22 122:8,10 122:13 123:1 124:1	104:16 105:17,24 109:20 113:25 114:4 114:23 122:11 123:23 127:5,6 137:16,18
	officer 193:2	124:14 126:15 127:11 128:20 130:14,19	
	offices 2:2 28:16 165:10		
	official 24:18,21 25:20 26:10 52:12,18 53:9 78:9,24 79:14 81:16 82:21		

139:2,22 141:12,13 141:23 142:5,25 146:5 147:1,10,10 150:9 154:25 155:1,4 155:4,10,22 167:17 171:6,25,25 172:3 175:14,24 177:9,11 178:23 180:20,22 181:1,4 187:8,21,22 189:13 190:18	opinions 9:18,22,23 30:21,25 50:6 51:12 52:21 76:20 77:2 86:22 162:20 175:8	opportunities 44:24 63:1 87:8 151:19	113:5 115:20,25 119:9,11 124:3 133:2 133:13 135:6 141:20 149:25 151:8 152:3 154:19 155:17 157:11 157:12,14 165:5 166:22 167:7,9 178:13,24 181:20 182:1 191:13	others 91:1 109:4 151:18 162:12	16:21 28:1 79:16 107:10	otherwise 14:20 59:21 116:3 140:13 193:12	16:21 28:1 79:16 107:10	P
onerous 34:20	opposed 20:5 39:4 180:8	opposite 13:21	ought 47:3,3 87:23 165:2,3	outfit 110:11	outlier 165:21	outlined 154:25	outreach 8:7	pages 1:2,7 50:10,16,20 64:18 66:3,5 67:1
ones 40:12 41:8 75:22 84:3 139:23 184:19	Optimist 105:7	option 34:7 87:12 157:3 159:2 159:17,19 188:25 189:20 190:5	outcome 21:2 125:23 126:11,16 193:12	outside 39:5 105:4	outward 121:24,25 122:2,8,9	outwardly 127:15,16,16 128:20	overall 112:6 139:12	paid 24:7,8,9,12 38:14 39:11 41:10
ongoing 63:12	options 47:10 154:11 185:12	oral 40:24	overrepresented 159:15	oversee 91:4	paint 165:9	panel 85:21	painter 122:3,7 132:8,14 143:24 177:17 179:6	
online 28:16,18 29:25 189:13	order 27:5	ordinance 161:6	overseeing 85:2	overseen 85:11	painter's 157:2,5,13,19 159:4 159:22 161:4,14	panels 186:8 187:15	paper 1:24 67:16 108:12 122:3,7 132:8,14 143:24 177:17 179:6	
onward 124:20 140:2	Oregon 191:11,12	original 19:15	overall 112:6 139:12	oversight 84:15	painting 162:15,22 163:2 166:16 167:13 168:23	paperwork 173:10 179:23 182:11 182:25 185:16,21 186:8 187:15	paperwork's 186:8 187:15	
on-point 152:2	opine 40:24	other 6:13 9:11 10:22 14:16 17:25 18:20,20 26:14 26:16,20 27:4,22 28:6 28:7,9,10 30:23 35:13 37:9 39:5 43:11 44:22 45:6 48:3,5 50:25 52:10 63:5,7,11 67:3 68:2 71:1,4,8 74:5,6 75:24 76:2,5,6 83:5 88:22 93:9 94:1 96:13,14 101:21,25 104:24 105:3,4 107:19,20 108:1	overrepresented 159:15	oversight 84:15	oversight's 85:11	painterly 162:15,22 163:2 166:16 167:13 168:23	paperwork's 186:8 187:15	paperwork's 186:8 187:15
open 190:17	operative 103:25	opining 101:6	oversee 91:4	oversight 84:15	painterly's 162:15,22 163:2 166:16 167:13 168:23	paperwork's 186:8 187:15	paperwork's 186:8 187:15	
open-ended 116:23	operative 103:25	opine 30:24 70:4	oversee 91:4	oversight 84:15	painterly's 162:15,22 163:2 166:16 167:13 168:23	paperwork's 186:8 187:15	paperwork's 186:8 187:15	
operable 139:2 143:2 180:17	operative 103:25	opining 101:6	oversee 91:4	oversight 84:15	painterly's 162:15,22 163:2 166:16 167:13 168:23	paperwork's 186:8 187:15	paperwork's 186:8 187:15	
operative 103:25	operative 103:25	opine 30:24 70:4	oversee 91:4	oversight 84:15	painterly's 162:15,22 163:2 166:16 167:13 168:23	paperwork's 186:8 187:15	paperwork's 186:8 187:15	
opine 30:24 70:4	operative 103:25	opining 101:6	oversee 91:4	oversight 84:15	painterly's 162:15,22 163:2 166:16 167:13 168:23	paperwork's 186:8 187:15	paperwork's 186:8 187:15	
opining 101:6	operative 103:25	opine 30:24 70:4	oversee 91:4	oversight 84:15	painterly's 162:15,22 163:2 166:16 167:13 168:23	paperwork's 186:8 187:15	paperwork's 186:8 187:15	
opinion 8:9 30:15,18 37:12 40:25 41:5 42:6 44:14 55:8 62:16 63:14,19,24 64:3,7,23 64:24 65:4 68:10 76:3 78:17 85:3,7,8 85:21,23 87:21 89:6 90:9 91:12,22 93:4,11 103:13,24 118:9 121:15,21 123:23 146:20 154:16,24	operative 103:25	opining 101:6	oversee 91:4	oversight 84:15	painterly's 162:15,22 163:2 166:16 167:13 168:23	paperwork's 186:8 187:15	paperwork's 186:8 187:15	

panoply 62:25 118:18	82:23,24	75:13	152:25
paper 17:22	parts 49:18 124:3	peer-reviewed 70:15,21,23,25 71:3,7 71:8,13 72:2 73:9,10 74:10,17,19,20,21,22 75:15,18	permissive 190:11,11,15
paragraph 50:8,14,15 66:6 82:13 118:4 122:14 124:2 125:20,21 131:2 136:13,14,25 137:5 141:7,11,14 147:23 154:6,10 157:5,13,19 159:3,23 161:4	party 20:2,3,8 22:5,22,24 23:15,16 103:2 105:18 117:9,17 155:16 156:5	Pennsylvania 106:4,6	permit 184:23,24 187:25
parameters 174:14	pass 56:15 79:2 150:22 152:12 165:19	people 23:3 24:23 34:20 36:17 46:6,11 47:2 55:5,20 55:25 58:19 59:16 64:4 87:15 102:24 112:10,14,17 117:15	permits 184:22 185:1 187:20
paraphrasing 102:13	passage 163:19	permitted 186:2,10,21	person 28:15 29:5 32:15 61:15 61:16,21 62:2 90:13 90:17
parliamentary 19:19	passed 21:20,24 91:15 101:10 101:12 109:1 118:18	personal 158:14	personalities 114:3
parse 168:17	126:22 130:3,5 133:16 146:14 151:3 155:13,22,23,23 163:15 165:15,18 176:2	personally 85:15,25 103:3	personally 85:15,25 103:3
part 19:7 26:12 44:16 45:4 61:24 80:5,19 81:3 108:8 112:25 113:4 120:6,13 140:8 141:24 190:21	passing 11:12,16 99:19 102:9 138:8 155:16	persons 86:19 88:18,18,18 90:2 90:4 109:6	persons 86:19 88:18,18,18 90:2
participation 109:22 150:3	passport 133:24	petition 7:22 54:15 88:11,12,13 148:10,11 149:2	Pew 4:24 178:24 182:18
particular 8:24 36:6,18 66:13,18 70:5 90:2,4 113:8,10 113:11 114:10 115:19 115:22 129:7 143:7 154:25 179:22	passports 134:5	photo 4:25 8:15 20:13 21:7 25:18,21,22 27:9 28:9	photo 4:25 8:15 20:13 21:7
particularized 113:11 114:11 151:17	past 38:13 39:14 43:6,6,7 43:23,24 96:7 166:11	29:1 33:2,4 34:17	25:18,21,22 27:9 28:9
particularly 33:11 34:21 35:9 63:2 65:17 74:2 87:8 99:4 101:4,12 110:16 126:5 132:22 160:19 162:2 164:25	path-breaking 191:12	percentages 173:15 175:1	29:1 33:2,4 34:17
parties 95:7 156:2 193:10	pattern 88:15,16 108:9 111:1 114:13 153:13 160:10 160:20 161:12	perfect 110:15	35:8 36:5,13 37:5,14
partisan 130:3 156:12	patterns 17:24,25 18:1 115:3,18 116:8	perfectly 127:19 128:8 159:12	42:6,9 44:14 45:3,12
partly	Paul 16:21 23:10 105:17	performance 20:2,8,10 132:9 139:17 140:3 145:10	45:15,19,25 46:4,12
	paying 58:5	period 20:18 39:9 124:19 158:1 165:23 177:25	46:14,15,17,23 47:3,6
	PDF 192:14	PERKINS 2:4 3:4	47:8,13,16,19,25 48:4
	peer-review	permanent 56:13	48:15,19,22 54:4,12
		permissible	54:23 57:16,23,24

149:17,22 150:23	point	184:11 186:20 187:2	power
151:22 152:18 167:21	67:16 72:1 74:10 88:1	polled	91:6
168:1 169:3,13,20,25	88:4,4,5 92:24 93:12	180:5 181:8	powerful
170:3,9,16,19 178:7	96:2 97:8,17,18	polling	48:4
180:2,13 181:9,13,17	106:21 110:25 111:24	25:10,14,16 26:5,24	practice
182:2 183:2 184:8,10	112:8 122:11 135:11	32:19 33:10,23 46:20	113:23 159:13 170:22
184:11,18,21 188:19	143:6,10 147:14	110:2,8,11,13 111:15	practices
189:6	150:1 151:25 163:21	111:22 132:4 182:1	83:23,24,25 105:1
phrase	168:18 169:2 181:25	183:19	144:13 167:19 168:9
131:17,18	182:1 184:12 187:18	polls	190:12
Ph.D	191:14	36:4,16,17 37:9 46:13	practicing
13:3,11	pointed	47:7,11,20 48:14 60:5	76:9
pie	74:14 85:24	112:18 131:22 143:22	precedent
160:21,23,25 161:2	points	178:22,23 180:25	21:4,5
pieces	187:21,22	181:6 182:7 184:13	precinct
67:3 93:9	political	poorer	24:17,18,20 27:1,3
pioneer	13:5 14:9 15:17 21:18	150:18	preclearance
16:18,20	21:25 22:8 24:1,6,9	population	89:1
piqued	39:19 43:1,2,10 44:1	65:12,13,15 95:20,20	predicted
97:17	44:3,5,6,8,9,23,25	142:8	43:16
place	45:7,15 56:6 68:1	populations	predicting
14:10,14,14 25:10,14	70:1,2 73:2 76:14,15	160:9	18:13 43:13,17
25:16 26:5,24 32:19	76:15,25 77:2 100:1	poses	predictions
33:10,23 70:24 88:11	101:15,17,24 103:2	36:6 156:9	20:12
119:7,8 130:21 132:4	104:1,6 105:13	position	prefer
146:24 147:1 148:10	109:21,21,22 110:15	13:12 57:2 91:17 96:8	131:18
162:16 189:8	129:14 136:7 155:16	148:13 151:10	Prejudice
placed	155:20	possesses	17:20 72:22
132:20,23,24 133:1	politically	134:6	premise
places	22:3	possession	33:5
85:8 107:19 109:17	politician	45:11 63:6 133:24	preparation
placing	22:16,17 23:5 101:15	134:5,12	9:11 10:6 12:1
109:3	politicians	possible	prepare
plain	21:18 92:13 102:25,25	34:2 86:11 113:18	7:8 9:24 177:9,11
104:11	107:14	114:18 115:10 126:12	prepared
plaintiffs	politics	possibly	9:16
1:6 3:2 39:25 41:3	15:10,12 17:20 21:13	9:20	preparing
plan	22:10 23:21,23 72:22	post	50:5 53:2
40:15,18 41:4	73:18 92:10,12 104:1	3:14 101:9	present
play	136:8 166:12	posture	25:16,18 26:23 27:9
19:7 94:8	poll	177:1	43:10,15 44:10 146:2
please	4:22 24:16 26:24 36:20	post-secondary	187:6
7:5 107:2 121:5 171:14	37:7 38:8,10 48:2,9	152:22	presented
182:15	110:9,22,25 111:3,17	potential	38:1 63:10 125:13,15
plus	112:23 178:24,25	159:25 161:3	133:4 145:7 163:6
7:23 97:1,2,3 133:21	179:10,11,17,21,21	poverty	presenting
145:6 170:1	180:12,19 183:13,24	82:16	138:15 145:24

president 20:7 99:6	Prize 16:14	production 24:11	25:25 26:1,8 45:18
presidential 13:7 17:21 18:14 19:13 19:14,19,22 20:2,10 20:21 21:6 24:1,4 29:14,18 43:13,17 57:22 72:24 94:17 102:11 110:18 117:3 118:20 119:3,6 133:18 135:16 137:21 189:5	pro 95:15	professional 22:17	52:1,5,8,12,20 131:5 131:15
	probably 6:1,3 16:12 20:16 21:23 38:24 39:8 40:7 42:4 52:23 74:22 82:1,10 127:8 133:3 134:12 174:24 181:21 189:24	professionals 105:13	provisions 81:12
	problem 128:18 145:25	professor 11:12,13 13:13,15,16 13:17,22 14:17 15:4 22:8 78:19 119:14,20 119:21	PS 136:6,7,7
presides 85:16	problematic 91:10	professors 10:25 11:5 13:23 133:2	psycho 90:16
presiding 89:15	problems 87:24,24	program 59:7,9 97:11,15 148:15 149:18,25 150:12	public 2:14 8:7 36:22 143:25 159:10,15 193:1,20
press 8:11,17,19 13:9 175:13	procedural 67:6 163:9,12,14,18 164:1,2,8,12,24 165:13,18 166:4	prominent 105:5,16,25	publication 70:15 71:13
pressure 87:20,21 88:6 108:3	procedurally 164:14	promised 129:8,16	published 13:8 18:3,6,15 70:20 71:16 74:22 76:10 136:4
pretty 22:2 50:18 84:25 92:19 95:12 104:11 110:14 110:15,19 134:16 172:23	procedure 19:6,25	proof 54:14 56:12,13,19,22	publisher 74:24
prevent 128:17	procedures 13:2 19:13 20:25 21:1 21:10 53:10	proper 141:18	publishing 74:25
preventing 127:18 128:2,4,8,14	process 7:22 8:15 32:21,24 33:9,21 34:20 35:8 53:17,19,21 54:6,15 54:17,23 55:8,10,16 55:17 56:2 57:10,10 57:14 59:22 60:8	proportion 130:16	pulled 128:5 182:17
previous 9:6	 63:13 84:8 85:8,10,12 85:16,24 86:7 87:15 87:18 88:11,12,14 89:15 90:5 91:6,10,19 91:21 97:3 106:11 109:13 148:10,11 149:2 150:9 162:7 165:6	proposed 189:13,15,19	pulling 128:10
previously 31:16	processed 162:8	proprietary 127:19	purpose 112:5
primaries 57:19	processing 162:9	propriety 128:7,9,13	purposes 58:1,20
primarily 20:1,7 80:3 81:19		prospectively 20:20	Pursuant 2:12
primary 17:15,22 22:6 29:14,18 44:19 94:14,17 95:6 95:16 137:15,22 147:11,13		Protestant 72:7	put 45:14 48:10 49:5 54:2 69:1 145:4 148:19 154:4 174:12
printout 4:18 168:22		provide 19:22	puts 43:24
prior 20:21 61:4 118:4 148:12		provided 30:24 147:24 172:21 172:25	putting 23:24 24:2 147:1
		provides 152:16	p.m 131:25 192:15
		providing 63:14,18,24 64:3,7,23 65:4 88:25	<hr/> Q <hr/>
		provisional	qualifications 76:2
			qualified 23:7 118:22

qualify 43:2,8 46:4	24:2 99:9 114:15 149:15 151:13 158:23	rather 19:25 58:4,24 98:18 133:3 189:20	6:19 16:4 62:13 73:24 87:11 96:10 101:23
qualifying 28:9 29:1 63:15	159:12,20 160:8,14 161:11 163:7	ratings 23:1	141:9,17,19 143:17 149:17 154:3
quantitative 13:2,5 16:6,10,25 17:13,18,23 18:7,22 43:1 70:3 105:9	races 115:8	rationale 155:17	reasonable 47:9
question 6:14,25 7:6 17:3 24:25 25:12 32:7 33:5 39:3 58:9,11,18 61:17 69:8 69:23 73:12 74:8,18 83:12 103:17 135:10 135:13 136:15 140:25 179:24 180:14 181:7 182:25	racial 44:17 69:21 70:9,12 71:9 72:3 73:3 74:11 76:3 78:4 80:18 81:2 82:5,15 84:16,25 85:5 89:8,20 90:1,12 92:14 98:16,23 99:3 100:21 100:25 102:2,18 107:6 150:15 160:17	reached 125:3	reasoning 123:11,24
questionnaire 56:16	racially 83:24,25 84:3,20 85:17 90:5,6 95:3 100:12,17 109:1 155:2 176:2	reaching 98:9	reasons 44:19 66:17 90:22 91:18 141:20 151:8 155:19 156:11 190:18
questions 49:13 116:23 123:10 145:4 160:12 178:14 182:8 192:6,8	racist 89:24 102:14,24 103:4	react 181:10	rebuttal 4:19 58:24 96:1 153:2 171:3,20 172:7 177:18 187:10,15
quick 10:24,25	raise 129:19 181:22,23	read 8:19,22,25 9:1,10 50:13 53:3,7,19,23 55:11 56:3 57:15 65:20 69:3 81:21 119:14,20,22 121:17 121:19 179:14 189:19	recall 11:9,19 25:1 40:12 41:8 47:14 54:1,1 60:12,16 73:6,16
quickly 8:8 77:4,6 92:8 171:20	raised 113:10 145:23 167:14	readily 133:13	94:13 111:4,7 112:12 119:23 120:2 121:20 122:10 133:6 135:12 172:21
quite 13:21 16:5 21:22 42:20 43:4 88:4 95:13,25 98:4 100:14 101:22 102:10 103:23 151:24	rampant 68:16	reading 53:12 54:1,5,8,14 57:8 122:10 189:24 193:8	receive 52:7
quo 163:16	ran 22:4	Reagan 21:22,25	received 12:23 13:3 52:11
quotation 149:3	rank 13:22	real 36:2 47:1 125:22 126:2 126:3	recent 6:2 8:19 9:6 11:1 15:25
quote 92:21 104:13,14 166:17	ranked 190:19,20	realities 45:8 68:13	18:24 22:4 42:5 43:7 44:8,9,24 52:6 94:10
quotes 148:20,21	ranks 13:14	reality 68:18 128:16	96:20 108:6 118:4 124:11 139:7,14
quote/unquote 147:25	rare 95:6 97:18 101:25 104:15	realize 54:21	140:11,19 144:24 175:4,8 191:1
<hr/>		realized 98:7	recently 6:9 7:24 8:3,8,17 15:24 16:5 25:5 29:3,15
R	rarely 81:6	really 10:25 22:3,18 23:13 35:25 49:18 75:8,11	39:21 40:23 41:14 94:9 104:14 120:1
3:1 5:1	rate 65:6 137:7 177:21	97:16 98:8,11 151:15 151:16 157:6 178:13 179:8 180:15	121:18 189:12 191:11
race	rates 63:19 133:24 134:12 141:4	realtime 20:21	recess 49:15 107:3 130:23 171:12 192:5
		reason	recipients 150:19

recognize 121:11 158:19 182:6	regard 79:22,25 91:23 157:7 160:4 172:18	150:14 rejoined 141:12	report 4:8,19 9:17,21,25 12:19 34:14,21 35:20
recollection 137:12,13	regarding 63:19,25 64:4,8,24 65:5 81:12 152:17 163:3	related 193:10	40:24 49:3,6,20,23 50:7 51:7,9,18,19 52:19 54:3 58:24
reconsideration 176:15	regardless 115:22	relates 92:18 126:20	60:13,25 62:19,21 64:12,14 65:24 66:23 67:1 68:5 77:21 78:1
record 77:23,24 84:11 107:1 122:15 192:15 193:5	register 28:13,15,15,16,17,18 63:3 79:6 87:9 91:1 109:4,15 154:12 159:11,17	relative 94:25 112:25 113:5,15 159:19	79:19 81:19,21 86:2 91:24 96:1 98:2,19 102:23 104:13 107:25
records 9:7 54:9 84:8	registered 26:25 36:25 37:1 140:9 157:21 158:1 161:20 183:16,17	released 133:21	108:13 110:8 111:16 112:2 116:12 119:14 119:20,21 120:7,14
recount 64:20,21	registering 191:8	relevant 17:8 67:15 107:21 108:25 109:2 133:10 133:11 145:18,21 146:2	120:17,18,25 121:1,2 128:20 130:25 131:8 135:17 140:22 146:8 147:22 153:2 155:1
recounting 124:9,11,12	registrants 161:3	reliable 110:13,14 111:21 137:24 138:24	163:8 171:3,20 172:7 172:12,16,18,24 175:17 178:14 182:1 185:8,18 187:10,16
rectify 87:23	registration 51:3 62:24 73:19,23,25 74:3 159:6,20,24 160:8,14 161:11 162:10 189:14 190:6 190:12,18,23 191:2,6	relied 50:5 144:18	reported 1:25 55:6
redacted 171:25 172:1,3	regrets 100:15	rely 92:3	reporter 2:13 5:22 192:11 193:1
redistricting 40:15,18 41:4 92:12	regular 14:24 15:5 19:12 26:11 27:6 35:11	relying 145:10 157:12 166:23 188:15	reporting 11:17
reduced 193:7	regularly 7:13	remains 124:2	reports 7:10 8:11 9:10,11,14 34:4,7 37:20,21,25
red-flag 148:25	regulation 30:11	remanded 176:14,18,25	40:19 42:15 63:8 65:21,24 111:12,22 162:16 177:10 187:8
refer 19:24 176:11	reinforced 9:23	remember 16:3 53:5 71:24 72:25 73:19 77:3 119:15 125:12 128:23 129:1 129:2 155:17 188:18 188:25 189:2	represent 99:25 129:15 168:21
reference 98:24 110:2 132:17 186:8	reinforces 91:22	rendered 125:1	representation 33:20 189:21
referenced 133:7 142:21	reject 152:4	renewal 173:15 174:23	represented 39:24
referencing 99:8 134:1	rejected 77:4 87:11 97:5,7 149:21 151:4,7	renewals 58:17 59:5 174:9	represents 163:17
referenda 20:7	rejecting	repeat 50:12 58:24	Republican 45:13 95:14 97:19 98:6 99:6 100:1 102:1 103:24 105:5,8,17,18

112:24 113:6 115:6,7	4:24 17:15,23 52:3	results	right-hand
115:13,23 116:1,4,8	110:2,6 178:24	4:23 43:14 61:25	136:6
116:13,17 117:20,23	182:18	110:22 111:15,18	rise
117:25 128:22 155:21	reserved	116:6 140:1,3 146:17	18:25 43:19 70:10 72:7
155:24,24 164:17	13:22	Retrospectively	rising
166:22 181:23	residence	20:19	94:25
Republicans	56:22	returns	risk
45:5 67:13 103:7 104:4	residency	51:3	125:22 126:1
105:21,25 108:7	161:15,23,25 162:17	review	Robert
116:2,6,13 149:20	resolved	7:25 8:1,4,5 10:22 18:4	16:13 127:3
155:20 163:22 164:4	79:10	18:8 51:14 60:12	robust
166:6 183:7	respect	87:2,4 92:9	21:9
Republican-dominat...	61:18 62:23 124:23	reviewed	robustly
45:7	144:8 156:13 190:17	7:10 38:4 92:5,8	20:23
request	respected	reviewing	role
28:24 30:9 33:16	124:5 138:9	60:25	175:22
requested	respond	re-enfranchisement	rolls
193:9	37:25 63:9 120:7	48:6	60:3
requesting	128:12 137:10 142:3	Richard	Romney
32:15	157:9,16 163:5	16:20	106:6
requests	responded	right	Ronald
136:17	48:1	7:4 12:14 19:5 26:25	21:22,25
require	respondents	32:12 33:2 43:9,15,20	rule
26:11 34:17 168:1,20	183:6	44:10 49:2 55:7 60:5	20:11 79:4 81:10 86:18
required	responding	66:3 74:16 75:19	129:13 152:25 153:23
79:13 167:21 183:2	22:18 47:24 48:8	86:1 91:3 93:22	154:2
184:17	response	94:18 98:22 100:10	rules
requirement	42:15 145:3	108:22 115:9 120:10	155:10 164:13
20:14 21:8 35:10 36:5	responses	120:24 131:22 136:16	rule-making
37:14 44:15 45:25	5:20 42:14	137:1 146:5,7 149:12	153:18
47:13,25 48:22 57:23	responsibility	151:25 157:4 158:6	run
60:1 159:5 161:16,18	85:2	158:16 159:3 160:11	22:4,13,14 23:18
162:17,20 180:6,13	responsible	160:13 161:17,22	running
181:9	108:7	162:18,24 163:1,11	22:22 23:15 103:21
requirements	responsive	163:21 165:1,4,8,11	rush
4:14,25 26:19,20 27:22	65:1	165:24 166:8 169:7	164:20
28:12 35:12 53:7	restriction	169:10,14,21 171:17	<hr/>
56:10 57:4 59:15	30:23	171:24 172:2 173:9	S
136:3 161:23,25	restrictions	173:18,20,25 174:4	3:1 4:1,5 5:1
168:24 183:20 186:17	109:14 126:22 154:11	175:2,6 177:15,17	same
requires	159:23	178:4,11,13,21	22:16 23:3 45:17 48:2
26:18 33:4 170:19	restrictive	180:18 185:23 186:9	81:4 82:12 92:20
requiring	96:3,9,16,17,18,25	189:16 192:8,9	93:12 95:8 106:1
169:13 180:2	169:25 186:9	rights	110:10 111:14 114:12
requisite	result	23:7 70:4 76:17,18,18	115:3 117:21 119:16
134:24	62:9 136:16 140:10	76:19 99:2,2,6,9,18	124:1 125:20 134:1
research	141:4	99:21 100:6,8,13	134:16 145:8 148:10

155:16 158:1 160:13 160:25 161:11 162:3 181:21 same-day 162:9 190:6 191:5 sample 111:2,4 112:13 133:19 Sanders 95:11 satisfy 27:5 saw 8:11 37:7 48:16 86:17 111:14 144:15 150:16 172:12 175:13 say 7:18 12:23 16:12,24 17:3 21:1,19 24:22 39:6 41:13 43:5,9,22 46:23 48:7,11,18,20 52:25 54:11 57:6,6 59:1 61:22,23 62:1,20 78:8 79:23 85:6 87:22 90:4 93:18 94:2 98:6,12,14,18 100:11 101:25 104:11 106:20 113:4 116:12 124:19 126:24 128:1 130:18 132:4,22 134:10 144:11 145:9 148:17 149:5,6 154:10 157:19 159:3 170:15 183:21 185:4 185:10 188:17 190:17 191:24 saying 34:1,24 67:11,24 68:14 79:19 85:14,16 91:20 99:20 100:18,19,20 102:16 103:3 104:20 106:1 129:10,10 138:12 139:25 140:18 143:7 144:5,14 145:7 146:4,4 166:13 says 86:4 100:7 136:6 144:6 144:11 164:17 170:8	170:21 183:17 184:8 scandals 113:9,20 scholar 138:9 scholarly 18:20,20 72:14 scholars 71:1,4 scholarship 69:19 70:6,13,21 71:4 71:8 72:2 74:10,19 75:18,24 76:18 school 4:21 15:20 38:10 79:9 159:10,15 179:17 180:19 schools 152:22 159:6 Schultz 97:23 98:15 99:11 104:12 166:17 167:4 science 12:25 13:1 16:8 18:9 109:21 112:1,16 136:8 Sciences 18:17 scientific 18:18 scores 76:11 scrutiny 164:21 se 24:21 seal 193:14 second 51:9,18 82:7 96:2 99:22 122:13 137:5 161:4 165:13 169:2 secondly 48:9 103:12 Secretary 83:15 84:14 85:3,14 89:6,14	section 107:25 154:8 155:1 163:8 secure 152:2,3 security 150:6 170:2 see 8:6 22:2 38:2 52:18 58:6 60:7 66:6 68:18 74:5 78:6 86:10 88:15,15 92:1 94:25 97:20 104:25 110:8 111:11 113:2 114:3 115:25 116:1,5,8,15 118:7 119:1 121:24 122:3,13,18 124:6 125:21,24 127:20 128:3 131:10,14 136:13,18,22 137:4,8 141:8 142:1 143:18 144:1 148:5 152:1 153:12 154:14 157:8 157:15,23 159:14 160:2,10 161:11 167:23 168:25 169:5 169:6 170:23 180:1,4 181:23 182:7,10,12 182:24 183:4 187:24 seeing 144:17 seem 30:13 56:3 57:9 72:14 99:19 seems 33:20 84:24 150:13 seen 7:14,14,21,23 41:14 47:20,20 52:10,25 55:3 67:14 80:15 84:4,22,23 86:2 94:23 94:24 107:13 111:19 111:21,24 112:19 126:12 132:19 148:11 153:16 165:4 168:14 182:7,22 segregated	83:2,2 segregation 79:9 80:7,14 select 14:3,4 selecting 186:18 semester 15:6 Senate 22:6 23:8 114:15 senator 8:13,14 23:8 98:15 102:8 103:6 senatorial 23:17 send 28:23 30:9 33:1 100:9 senior 12:25 sense 113:21 164:12 sent 33:17 133:2 sentence 93:12 112:23 122:13 122:14,18 124:1 125:20 127:17 136:20 144:1 148:5 154:10 separate 174:11 186:13 separately 39:3 154:19 separates 83:3 September 173:17 174:7 182:10 183:12 193:17 sequence 45:2 67:6 156:19 series 18:11 114:22 seriously 165:2 seriousness 165:3 served
--	---	---	---

41:10	166:23 168:7 169:3	57:24 58:21 65:17	52:1,3,8 53:5,6 54:11
services	170:16 181:1 183:2	86:2 87:25 94:7,17	55:6 56:4 59:4 62:7
185:25	Showed	124:12 145:16 146:23	65:22 66:4 68:11
serving	36:7 44:15	161:21 163:22 176:5	72:21 74:4 78:23
22:17	Showing	177:2	79:14 84:19 85:19
sessions	26:13 33:9 47:11 108:5	single	87:14,23 89:3 94:24
164:5	182:25	30:19 67:21 114:4	95:10 99:15 101:14
set	shown	155:3,4 157:13 168:4	101:15,21 103:21
35:12 57:3 67:3 84:11	66:20 140:3	Singling	107:13 110:1 115:1,1
120:17 121:2 135:17	shows	78:25	116:24 124:23 128:21
146:5 192:9 193:13	114:7 138:19 139:14	singularly	129:19 130:10 132:3
sets	142:19 145:4 146:25	10:13	132:24 133:1,22
19:11	181:8	sit	135:10,11 146:2
seven	shut	75:2	147:18,21 158:11,23
76:11 141:22	23:14,16 69:17	situation	159:13 161:24 162:13
several	side	44:1,3 81:23	168:3,15 176:12
34:12 48:1 101:9 154:9	95:12,14 120:17	situations	184:17,19 185:11
186:1	135:17 146:6	108:2	someone
shame	sign	six	24:22 34:25 35:1 43:2
21:19	28:2,4 47:9 62:12	160:22	95:12,13 98:5 103:25
shares	150:12	size	105:18 127:2,2
113:15	signal	111:2,5	something
sharp	148:25	Skipping	8:17 36:22 42:24 44:4
21:4	signature	147:22	44:5 46:8,9 48:11
shift	186:11	slowly	66:20 78:18 80:24
108:10	signed	177:14	86:1,17 91:21 95:9
shop	155:24	small	97:16,25 98:1 106:4
103:21	significant	129:5,18 140:5 143:11	110:17 115:11 130:15
Shorewood	99:13 114:10 145:5	158:15,19 182:14	132:21 133:12 153:10
127:4	signing	189:1	153:15 154:1 157:16
short	193:8	social	163:5 164:20 173:7
116:21 171:10	similar	16:8 18:9 112:1,16	185:6 191:22
shorthand	11:14 23:25 24:3 45:7	society	sometimes
117:19 193:1	69:23,24 88:10 106:4	20:24	39:15,16 112:4,4
shortly	108:2 115:21 116:8	socio-economic	somewhat
172:23	134:12,18 167:7	33:14 34:22 45:9 82:15	134:18
should	175:24	82:20 83:5 92:15	sorry
62:6 98:9,10 134:12	similarity	108:16,24 109:9,19	60:13 92:23 129:2
183:1,7,8,9,10 184:7	45:5	109:23 158:24	132:15 141:10
shouldn't	Similarly	socio-economics	sort
98:9	18:22	63:6	105:25 166:10
show	simply	some	sound
28:6,10 33:23 60:7	33:9 60:1,3 80:22	6:21 7:11,13,14,23 8:2	60:14
66:22 108:1 111:1	177:2 186:25	8:6,7 10:5 11:13	source
114:12 115:20 120:6	since	18:24 21:20 22:19	17:22
125:2 140:1,7 141:3	9:16,21 13:14 22:23	23:25 24:3,6,8,8,19	sources
144:24 159:8 165:18	31:10 37:9 52:25	38:2 45:17 46:20	17:15,16

South 88:24 89:1	32:22	92:15	45:7 66:25 70:20
southern 81:24	spending 33:8	start 49:12	80:15 88:22 93:21,23
SPAE 140:16,19	spirit 99:1,17,20,25 100:7,12	started 5:15	96:13,14 107:20
SPAEs 141:1	Spiva 3:3 6:16 41:23 49:12	state 7:12,23 26:5 27:7,8,11	108:1 125:21 131:3
Spanish-language 79:12 80:1	55:22 56:23 58:22	27:13,14 31:3,10,17	136:21 137:20 138:25
speak 10:10	60:15,20 63:21 69:6	31:22 32:11 34:17	139:5,8,9,10 140:5
speaker 106:3	73:11 76:5 77:23	38:1,1,6 40:13,14,17	141:5,8,16 142:7,24
speaking 6:13	82:7 86:24 89:9,18,22	41:4,11,15 42:10,11	143:1,8,13,14,21
special 13:22,23 78:25 109:8 117:8 159:5	90:14 102:19 123:1,7	44:25 50:20 56:14	146:18 147:23 165:5
specialize 105:8	123:16,20 125:8	57:5 60:2,7 63:3,10	183:20 187:9 188:6
specialty 13:4	127:23 130:20 131:7	63:11,11 68:17 74:1	190:24 191:5
specific 35:12 42:25 48:15 71:6 82:4 153:16 159:25 184:15	135:9 171:9 182:15	78:24 79:3,12,23,23	state's
specifically 58:13 80:25 98:17 120:2 139:15 147:19	182:20 192:4,7,11,13	79:23 80:4,6,8,10,13	63:25
specificity 175:1	spoke 7:10 10:5 11:15	80:16,19 81:3,14,24	state-sponsored
specifics 9:9 40:9 46:15 189:23	spoken 10:6,9,15,18 11:5,10	86:5 87:10,13 88:13	78:9,16 81:15 82:4,21
specify 112:7 169:23	11:11,12 104:7	88:16,21 89:3 90:7,23	82:23 83:9
spectacularly 22:7	spotlight 180:25	91:24 92:13,20 96:3	stating
speculate 61:1,2 86:21,25 134:15	spread 104:25	103:10 105:25 109:6	110:21
speculating 42:1	spurred 22:14	111:24 118:3 120:23	statistical
speculation 41:24 60:21 134:14	SRD 159:9	126:19 137:16,18	15:17,21,23,25 133:4
spells 53:14	stable 19:17	139:2 142:5,8 143:7	statistics
spend	staff 106:9,10,14	159:23 162:2,9,12,21	150:16 158:22 159:21
	staffer 21:24 103:20 167:3	163:6 165:10 166:6	status
	staffers 21:18	166:12 167:19,20	13:18 33:14 34:23
	stamp 151:22	168:19,19 173:5,22	56:14 163:16
	stamps 149:22	183:18 186:16 187:19	statutes
	standard 83:5 111:25 112:15,18	188:20 190:12,17	53:3
	standing 34:22 109:9,19,23	191:13	stem
	158:24	stated 137:6 157:13	82:21
	standings	statement 78:2 98:14 99:13	stenographically
		101:22 102:5 105:16	193:6
		118:7 124:16 127:22	Stephen
		134:21,25	138:4
		statements 45:13 67:22 100:15	steps
		101:8 104:15 105:23	25:13 26:14,16 60:6
		105:24 106:9 150:10	88:17
		150:10 156:21 166:21	step-by-step
		167:8	55:4
		states 1:1 2:13 5:13 19:18	Stevens
		23:7,12 33:3 35:13	121:20 125:13
			still
			15:1 47:10 51:10 55:8
			63:13 77:20 96:22,23
			100:16 133:10 134:17
			134:17 137:23 151:3
			158:15
			stimulating

95:16	92:14	170:2	surprisingly
stipulation	subject	supplemental	143:15
173:4	13:6 55:18 59:21 70:5	9:25 177:10	survey
stood	70:7,8 76:20	support	112:16 132:9,20,22
110:16	submit	4:24 46:3,12,16,23	133:7,9,16 134:2
stop	29:1	47:18,19 48:4,19,21	135:1,4,12,14 136:25
73:5 92:16 130:21,22	submitted	48:25 63:25 69:2	137:24 138:13,23
153:17,22	40:19 41:1 42:16	115:7 130:6,9,11,17	139:17,24 140:1
Street	submitting	130:17 182:2 184:11	141:9,17 144:19
2:5 3:5	7:13	supposed	145:10,11,23 146:8
strength	subsequent	25:25	146:21,22 147:4
20:3 113:8	138:24 141:1 145:17	suppress	183:1
strengthened	145:20,22 147:6	98:13,13,16 101:3	surveyed
9:23	176:19	103:14	112:11,17
strengthens	substance	suppressing	surveys
87:6	10:11	98:8 103:1,5	51:11 135:6 136:24
strict	substantial	Supreme	137:2,6,10,11 138:24
131:2,16,19 137:19	65:14 130:16 141:3	67:1 69:4 88:13 121:14	139:15 145:17,20
138:2 139:1 140:5	substantially	122:23 123:11,15	suspect
141:5 142:25 143:4	134:22	125:3,6,11 148:2,9	184:2
143:13,14 146:18	substantive	165:11	SVRS
183:20	11:18 67:6 163:9,13,15	sure	50:23
strong	164:2,3,8,16,24	9:22 10:13 12:10,23	swath
44:23 94:15 182:2	165:13,18 166:3,5	17:7,10 25:12 27:8,9	69:18
stronger	substantively	28:7,22 32:1,7 33:2	swear
182:2	125:11	33:25 34:5 42:3,23	178:5
struck	success	46:11 49:4,14 51:7	switch
97:14	112:24 113:6 115:13	54:19 55:24 58:13	130:20
student	sudden	59:3 60:24 62:11	switched
25:23 35:11,11 186:15	86:10	73:13 83:11 106:24	13:1
students	suddenly	107:1 108:11 120:18	sworn
15:13,15 159:15,24	87:22	121:4 127:11,25	5:3
186:12	sufficient	128:9 134:15 135:10	system
studied	30:21	137:13 152:20 162:1	18:13 19:11,12,18,19
36:12 125:18 126:8	suggest	169:15 170:21 171:11	19:20 39:20 43:12
134:5 147:12	143:22 170:9	174:13 178:18 179:16	74:3 92:21 93:5 94:1
studies	suggested	179:25 180:25 182:9	94:2,20 190:21
37:4 45:17 124:23,25	47:23	185:15 189:22 191:3	systematic
139:8 140:7 142:21	suicide	191:13	19:21
143:2 144:24 145:1	129:14	surge	systems
147:15	Suite	116:25 117:3,4,5	73:2 75:7 80:16 83:2
study	2:6 3:6	surprise	<hr/> T <hr/>
18:25 19:1 35:19 36:7	summarizing	183:25	
36:10 45:18 139:19	173:14 183:1	surprised	
142:17 144:9 145:4,8	summary	53:20 168:5 184:6	
146:8,16	40:21 182:19	surprising	
stuff	superficial	46:6 47:17 181:12	

112:11 114:14 115:15 116:9 132:12 133:24 134:13 140:3 146:7 150:1 173:10,14,22 174:2 182:24 187:8 187:11,11,12 188:4,4 tables 108:17 110:1 132:17 tabulated 61:20 62:1,3,5,7,10,14 tabulation 61:25 take 5:23 11:25 25:13 26:14 43:15 44:10 49:13 90:7 121:9 124:15 131:20 135:24 136:10 168:13 171:10,14 179:4,20 182:5 189:21 191:8 192:1 taken 7:24 8:3,18 49:15 80:4 80:13 107:3 130:23 144:9 154:10 171:12 192:5 193:3,6 takes 54:3,12 105:13 taking 88:16 125:16 176:20 177:7 talk 9:8 34:3,12,16 46:14 46:15 64:13,14,17 66:4 82:12 86:15 90:5 97:7 105:19 108:15,17 128:21 131:2 145:1 149:8 161:14 162:22 167:13 172:17 175:17 177:18 181:2,18 189:11 talked 38:12 43:11 52:17 54:22 72:6,10 95:25 107:9 108:16 118:2 120:8,10 145:3 146:3 157:1 166:2,17,25 167:6 173:11,12	175:2 178:19 181:11 188:24 talking 14:6 34:13,21 36:21 38:7,10 44:14 46:8,9 51:21 58:11 69:4,9 72:16 73:9 78:9 83:20 84:13 86:11,16 93:19 97:6 99:9 102:9 104:18,19,23 107:5,14 128:1 131:7 133:12,22 135:1 139:16 145:16 155:15 158:3 161:5 165:5 168:19 178:1 186:4 talks 24:14 100:5 133:24 152:21 163:9 target 84:4,21 167:12 191:4 targeting 161:12 taught 15:16,21,23 16:1,4 teaching 15:2,4,6,8,9 technical 18:15 152:22 153:22 technologies 20:25 Technology 14:18 16:18 Ted 21:21 telephones 82:18 televised 23:17 television 8:12 104:9 tell 8:23 12:21 16:23 17:11 30:10 89:16 118:17 129:22 163:12 169:17 174:25 176:9 telling 147:24 190:1	tells 129:24 ten 22:11 23:21 24:4 41:18 41:19 42:4 45:22 46:10 67:22 tended 79:8 tense 96:7 tenth 112:8 tenths 141:23 tenure 13:16 ten-day 161:15 term 102:15,22 terms 57:7 81:15 93:22,24 115:11 133:8 144:7 164:14 181:7 184:15 185:3 190:12,24 test 56:15 68:7,8,8 110:16 152:2 testified 5:3 6:5 39:21 40:2,12 40:20,23 41:11,15 42:15,19 144:23 testify 6:20 12:10,14 43:3 177:5 testifying 39:25 41:2 testimony 5:23 37:23 40:25 77:13 102:23 146:3 177:8 186:14 193:5,6 tests 86:3 Texas 35:19,22 36:7,10 45:18 107:12 175:17,18,20 176:1 177:5,10,14	text 122:5 Thank 192:8 theory 20:6 116:25 thing 39:14 48:18,19 67:20 67:21 69:16,19 87:23 101:20 106:1 123:23 145:8 164:19 179:15 things 17:17 20:17 27:5 30:22 34:12 37:24 45:22 51:2 55:13 56:7,7 63:5 69:10 74:6 78:23 81:6 83:1 92:17 95:22 100:18 104:12 105:12 109:18 113:5,7 119:9 120:5 125:5 126:4 128:10 145:22 156:6 157:17 165:1,7 177:13 182:4 think 11:21 12:6,14 22:7 24:18 27:19 31:18 36:8 40:7 41:4 42:1 43:6 47:1,2 50:8,24 50:24,25 51:8,18,25 54:2,22 55:6,10 56:15 56:20 57:1,20 58:23 62:18 63:22 64:17 66:23 71:11 76:25 83:22 84:1,10 85:17 88:7 89:11 90:16 94:8 95:25 98:21,22 98:23 99:22 100:14 101:2 102:5 106:3 107:10 109:2 117:11 120:20 121:22 123:10 125:5,11 126:3 127:9 129:3,24 130:7,7 131:25 132:11 137:17 137:18,23 138:19 139:9 141:18 142:4 144:4 149:11,24 151:25 153:24 154:4
--	--	---	--

156:24 158:22 159:3	65:10,22 69:16,20	131:9 134:19 152:19	trouble
160:10,23 164:10,25	73:1 75:4,9,12 77:5	158:6 162:22	94:4
168:3 169:12 170:3	87:12,14,25 93:19	topic	true
173:10 174:20 178:5	95:8,21 96:4 101:12	18:16 72:20 74:11	33:11 63:22 124:2
180:21 182:23 184:23	110:16 122:16 125:1	116:11 147:4	144:3 193:4
185:1,8,9,16 186:22	133:14,16,22 138:3	topics	truly
186:23 187:10,11	140:24 141:2 142:16	62:15,17	11:15 61:9,10 115:12
188:15 189:4,10	144:15,22 146:23	tortuous	Trump
190:14	150:21 157:18 160:22	53:21	95:13
thinking	160:25 162:7 164:5	total	truthfully
152:10 180:22	164:17,18 165:23	157:20,25 174:1	6:20
thinks	167:10 173:19 175:4	totally	try
99:23	177:16 178:1 179:20	144:8 152:2	17:7 116:23 168:17
third	180:12 183:14 186:15	touches	191:21
92:24 97:17 131:2	189:4	147:4 173:10	trying
137:4 141:7,11 166:4	times	towards	44:21 98:18 100:8
thirds	5:17,25 25:4 152:7,8	191:1,7	101:15 104:1 112:7
65:13	160:21,22	traditional	152:14 184:23
thought	timing	17:13 18:11,23	turn
22:19 189:18,25	166:15	Trans	121:24 127:15 185:14
thoughts	tiny	53:24	188:12
99:23	112:13 142:10,12	transcript	turnout
thousands	143:13,16 186:4	4:6 49:11 121:8 135:23	9:1,5 44:25 51:2,23
55:20,25 59:2,4	title	168:12 171:8 179:3	63:19,23 64:24 93:14
threads	30:11,14	193:4	93:17,25 94:5,6,12,14
157:1	today	Transportation	94:14,16,21 95:1,4,5
three	5:10 6:20 7:5 9:11 24:2	83:16,18,21 84:14 85:1	95:16 112:8,25 113:1
13:24 18:18 40:7 49:17	96:15 107:11	85:4,12 89:7 170:2	113:5 115:12,14
84:12 104:12 128:24	today's	Trantor	118:5,10 119:12,24
128:25 129:21 130:7	7:8 10:7 12:1	105:7	119:25 120:6 137:21
133:16 153:15 167:4	Todd	treatment	190:20
174:12	104:14	79:1	turnouts
three-judge	together	trend	95:23
85:21	43:24 49:5 68:9 154:11	111:1 112:7 119:25	turns
threshold	154:18 156:23,25	191:1,7,11	106:17 112:24 113:4
130:10 158:11	178:17	trends	Twenty-five
throughout	token	44:25	41:22
124:4	130:13	trial	Twenty-seven
tied	told	6:5 8:1 12:3 39:22	132:16
109:19	12:16 75:24 87:19	106:23	Twenty-six
tilted	140:16 141:21	Tribal	131:11
84:3	took	184:25	twice
time	10:24 43:20 88:5 115:7	tricky	25:5
7:5 13:25 15:1 16:2	170:1	180:14	two
21:17 24:19 27:20	top	tried	6:4 12:11 17:6 36:21
29:10 31:24 32:22	78:22 79:17 93:22,24	53:19 59:19 99:25	37:5,15 40:6 49:6
33:7,8 37:9 57:24	97:7 120:22 127:16	191:20	52:6 60:6 61:12 63:8

65:11,13 88:20 94:10 95:7 136:24 140:17 141:22 142:5 143:1 147:16 171:22 186:13 two-party 19:17 type 7:19 51:21 62:8 126:5 126:14 types 185:5 typewriting 193:7 typical 35:13 111:16 112:2 typically 111:21 T-R-A-N-S 53:25	54:13 55:12,17,21 58:10 61:17 69:8 74:21 77:17 81:8 88:1 99:10 106:21 109:17 178:10,11 understanding 12:8 25:15 26:7,23 28:25 51:10 53:12 55:15 58:19 104:3 136:7 142:20 143:3 176:8,9,10,25 understood 7:1 24:25 104:5 152:14 unemployment 82:16 unexpired 27:19 unhappy 117:16 unified 166:6 uniformed 185:25 uniformity 104:23 uniformly 109:5 uninterested 10:14 unique 118:1 United 1:1 2:13 5:13 19:18 23:7,12 66:25 70:20 unity 20:3 universal 46:3 universe 143:8 144:8 universities 14:16 university 4:21 13:4,8,13 14:1,1,4 14:11,25 15:22,24 16:3 38:9 159:24 186:7	unpaid 24:8 unsuccessful 22:7 unusual 165:21 updated 137:23 138:19,21,22 upheld 122:23 123:3 urban 79:8 urgent 22:19 usage 177:18 use 35:11,13 65:9 75:10 151:5 159:1,9,17 167:14 172:18 189:3 189:4 using 96:7 102:15,15,22 111:14 usually 47:14 111:19 utilized 68:6 utterly 23:22 U.S 4:12 22:6 87:18 114:15 185:25 187:25	various 108:21 109:14 185:22 187:9 vary 167:20 168:9 174:25 vast 143:12 173:23 vastly 137:21 169:22 vehicle 109:16 vehicles 51:6 82:17 83:17 84:15 verbal 5:19 verbally 27:10 verified 25:19 versions 171:22 versus 5:12 114:15 vestiges 74:2 veterans 96:21 view 20:10 viewed 20:7 viewpoints 67:8 68:23,24 166:23 Vinovskis 16:19 violation 164:13 Virginia 6:3 39:22 42:5,10,12 44:13,21 45:1,1,6,10 45:12,20 46:18 47:12 47:22 48:16 59:6,13 59:25 60:1,4,11 81:15 81:25 82:3 188:17,19 189:3,6 Virginians 45:24
U			
Uh-huh 72:9 ultimate 90:24 ultimately 40:20 unable 60:7 uncertainty 54:8 unclear 58:2 uncommon 190:24 under 21:2 32:5 72:13 84:2 86:18 88:5 99:6 109:14 118:24 122:14 149:21 165:25 167:20 189:6 193:7 undergraduate 15:13,14 underlying 149:1 understand 5:19 6:17 7:2,20 8:2 25:12,23 26:2,4 32:7	United 1:1 2:13 5:13 19:18 23:7,12 66:25 70:20 unity 20:3 universal 46:3 universe 143:8 144:8 universities 14:16 university 4:21 13:4,8,13 14:1,1,4 14:11,25 15:22,24 16:3 38:9 159:24 186:7	vacated 176:5,23 valid 123:18 169:3,4,19 170:8 variance 143:4 variants 185:11 variety 20:23 114:1,2,2	

Virginia's 188:5,9	73:18 84:1 93:8,14,16 93:24 94:6,8,11 96:12 96:18 97:2,4,11 99:19	voting 4:15,25 17:24,25 18:1 23:6 29:9 30:23	Washington 1:13 2:7 3:7 14:7
virtual 126:18	102:12 103:5,11,12 103:14 104:19 105:12 106:5 108:6 109:12	31:18 32:10,14 33:10 35:18 44:24,25 47:7 51:15 58:1,3,13,20	wasn't 37:21 66:1 70:23 73:22 91:22 94:1 106:17 143:6 168:16 190:21
virtually 84:10 108:5 124:21 125:18 126:6 155:4	109:13 112:25 113:4 119:6,8,10 120:9,10 121:16,21,23,25	59:20 60:3,11 61:3,4 61:4,6,9,11 62:23 64:5 65:6,10 67:12,25	watched 104:8
visited 14:15	122:9,14 123:19 124:21 125:14,19,22 126:1,5,10,14,19,23	70:3 76:17,17,18 79:1 81:12 99:2,2,6,8,18 99:21,24 100:5,8,9,11	watching 92:10
visiting 14:17	126:24,25 127:1,7,9 128:3,16 132:2 136:16 137:19 138:2	100:13,16 104:20 105:1,1 115:17,21 117:16,17 126:22	way 12:24 20:9 24:13 31:23 36:15 39:16 46:17,18
vote 25:10 27:3 28:13 29:5 29:20,22,23 30:3 31:1 31:2,11,11,23,24 32:18 33:24 35:22 36:8 47:4,10 61:7,12 61:14,16,21 62:3,5,6 63:1 79:3 86:1 87:10 87:19 91:1 95:19 103:14 105:21,21 108:3,4,4 109:4,15 110:20 113:16 117:6 131:21 136:16 137:7 141:21 153:20 154:12 158:16 161:19 162:13 165:1,4,8,24 180:2 183:2 191:18	138:15 139:1,12 140:6,10 141:3,4,25 142:11,12,25 143:4 143:13,15,23 144:8 144:11,12,25 145:24 146:14,18,24 147:5,7 147:19 148:4 149:16 151:15,18,19,20 152:18 172:20,22 176:2 178:2,7 180:13 180:13 184:11,15 187:4 189:6,14 190:20	127:13 128:22 129:20 134:23 138:16 139:4 140:8 141:19 143:17 147:5 149:18,23 151:5,23 152:4,5 158:13 163:7 169:8 169:25 177:19,22	ways 46:5 48:1 65:18 80:15 154:22,23
voted 25:6 29:3,8,10,17 31:13 87:12 98:5 99:11 101:13 191:23	voters 4:16,23 22:25 31:19 35:5 36:25 37:1 46:9 46:10,16 48:3,17 59:7 60:6 61:11 63:15 107:16 117:5 118:6 118:11 136:3 140:9 142:9,12 143:8,12,14 143:16 147:18,25 155:9 159:9 160:1,5 172:18 180:5 181:9 183:1,16,17 191:8	vs 79:11	weaknesses 113:8
voter 6:3 8:15 20:13 21:7,11 25:13 26:12,14,18,19 26:25 27:23 28:2 30:22 32:6,13 35:5,7 35:8,9 36:12,13,23 37:5,13 42:6 44:14 45:3,11,15,15,19,25 46:4,12,14,15,17,23 47:2,6,13,16,19,25 48:4,15,22 50:25 51:2 51:4 53:22 54:4,23 57:16,24 59:14 60:9 62:2,22 64:4,8,9,14 64:24 68:17 71:14	wage 181:22,24	wealth 89:2 138:22	
	Wait 102:19	weather 141:21	
	waiting 27:20	website 4:18 54:25 55:4 168:22 182:18	
	wake 87:22	Wednesday 1:14	
	want 12:20 14:4 40:9 50:4 50:12,13 61:1,2 64:20 66:4 71:20 86:20 104:20,25 105:20 107:10 116:19 120:16 163:23 164:20 171:5 174:16 179:5,7,8,11 181:22 188:7	week 8:9 12:6,7 29:16	
	wanted 67:25 75:9 99:7 111:9 181:3 182:21	weeks 6:10 12:11 180:20	
	wanting 107:14	weigh 76:13	
		weighed 165:3	
		welfare 28:16 150:19	
		Wellstone 23:10	
		went 13:15 42:6,8 50:24	

57:18 82:6,10 177:22	179:14	190:5,11,19	write
weren't	wider	Wisconsin's	36:10 172:11
35:24 87:17,18	169:22	94:6 184:11	writing
Western	wife	Wisconsin-specific	69:18
1:2 5:14	10:9,10	146:21 147:3	written
Weyrich	win	witness	41:1 46:17,18 92:11
105:17	102:11 103:7 105:13	42:17 135:21 193:13	96:24
We'll	winner	witnesses	wrote
9:8 51:20 105:12 121:2	16:13,14	63:11	172:16
we're	winner-take-all	won	X
5:10 6:12 14:6 34:3,13	19:20	19:2 76:12	x
36:21 38:7 46:9	Wisconsin	wonderful	1:3,10 4:5
67:11 77:22 93:19	1:2,4 3:13,15 5:9,11,14	14:14	Y
96:13 98:20 105:11	8:20,25 9:7 10:20	word	yeah
106:2 115:14,17	25:2,6,11,14,16 26:2	66:7,10 92:22 93:2	17:12 40:11 42:3 55:24
120:13 124:19 137:20	26:17,22 27:24 28:13	149:4 165:22 190:15	57:1 62:18 66:23
155:15 157:17 168:18	28:21,25 30:3,7,12,20	words	67:24 73:13 75:6
178:1 192:2,9	32:5,10,13 33:3,15	43:11 94:1 116:1	78:7 87:4 97:9 98:20
we've	34:17 35:9 36:4,13	126:25 155:17	109:2 114:17 116:22
11:13 49:17 80:15	37:4 46:18 50:21	work	117:2 121:10,18
90:21 114:25 119:12	52:6 53:3,24 54:12	17:12 24:7,8,8,9,14	122:9,9 123:22
146:3 155:19 156:7	55:2 56:11,14 57:2,17	38:13,21 39:1,4,7,11	125:10 127:25 131:10
157:1 160:8 166:25	57:25 58:1,21 59:9,15	43:6,9,23,23,24 44:10	131:13 138:11 160:3
173:11 175:2 178:19	61:6,7,11 62:10 63:3	44:11 56:7 67:17	160:23 161:2 164:12
184:5	63:16,20 64:25 67:14	71:1 138:5 144:19	172:15 178:23 181:5
whatever	68:17 78:2,8 79:3,12	145:2 176:12	182:10 183:11 185:20
105:13 106:23 162:7	79:24 81:3,11,18,25	worked	185:23 187:17
whatsoever	82:13,22 85:4 87:10	16:22 24:16,20 173:7	year
125:19	88:21 92:20 93:4,13	worker	12:25 33:18,23 39:10
WHEREOF	94:4 96:3,8,14 100:1	24:17 186:20	57:22 115:23,24
193:13	102:11 103:10 105:5	workers	116:1,4,5,7,8,13,17
white	107:18,21 108:2,8	187:2	117:20,23,25 135:16
18:12 19:23 20:3,4,8	112:24 113:6 115:4,6	working	139:25 147:10
21:25 24:15 43:12	115:8 117:23,25	15:1 32:2 43:16 60:23	years
72:6 94:25 108:3,4	118:5,9,15 119:24	106:13 149:22	13:17 14:25 22:4,11
112:25 113:4 115:21	124:24 126:19,23	works	23:21,21 24:5,20 37:6
117:10 158:21	127:4 131:3,23	18:7,24 39:20 105:7	37:15 38:22 40:2
Whitehead	132:20 134:6 146:8	131:6	76:10 86:8 92:11
1:25 2:12 193:2	146:14,23 147:7,12	world	101:9 125:17 127:7
whites	147:12,24 148:1,9,16	18:18	133:16 140:17 186:13
45:10 47:19 83:3 84:12	157:21 158:15 159:12	worry	191:1
85:10 108:18 113:16	160:14 165:20 166:22	126:4	year's
114:5,8 115:18 150:3	167:6,9,20 168:1,17	wouldn't	27:20
150:18 159:19	169:24 173:16 180:4	30:13 68:1 74:22 82:1	yourself
whole	184:9,16,17,22 185:4	100:17 116:4 129:14	25:17 26:24 42:21
56:4 111:23 114:22	186:16 187:3,21	145:21 160:16 168:5	51:12
119:13 149:11 179:5	188:1,23 189:14	170:8	

\$	135 4:13 14 108:12 173:10 193:17 15 46:10 94:3 125:17 127:6 189:10	13:4,14 14:6 1980 14:19 1984 20:22	157:22 182:11 183:13 2014 4:22 29:13 36:17 37:3 62:24 64:25 65:6 94:24 148:1,15 177:23 178:5 179:18 180:23 189:10
1	15-CV-324 1:7 5:13 16 12:5,6 109:24 188:4 16th 9:17 172:8,15 183:13 168 4:18 17 112:22 171 4:19 179 4:21,24 18 114:14 179:24 181:7 181 4:12 19th 78:24 81:11 124:18 1928 13:7 17:21,24 72:24 193 1:24 195 121:25 1957 99:1,2,5,8,18,21 100:5 100:8,13 1960 20:20 1967 12:24 1969 72:16 1970s 13:9 18:3 1972 94:17 1973	2 4:11 50:1 121:6,7,9 2/16/16 4:20 2:02 192:15 20 1:14 24:19,20 64:18 20th 18:1 124:18 2000 124:20 20005-3960 2:7 3:7 2006 22:6,14 23:25 115:23 136:24 137:14,16 142:21 157:22 2008 4:12 43:19 95:9 117:4 121:15 124:13 125:4 132:10 133:9 134:1 135:1 136:25 137:15 137:20,24 138:23 140:2,5,19,23 142:21 144:19 145:4,11 2009 133:22 136:4 2010 64:25 65:6 114:15 115:4 116:12,17 117:7,12,19 166:7 177:23 2011 40:12 58:21 62:24 91:9 91:15,20 96:5 118:4 133:14,17 145:6,14 147:2 148:14,14 151:13 173:17 174:7 2012 20:22 43:16 95:8	2015 52:8 87:25 94:14 147:12 151:11 173:17 174:7 175:14 2016 1:14 8:20 43:17 52:14 52:21 57:19 94:11,24 103:8 119:5 134:6 147:13 172:8,14 175:12,12 193:14 2018 119:6 193:17 202 2:8 3:8 21 116:11 21-page 74:9 22 64:18 118:3 120:20 227 162:25 23 35:22 87:13 100:16,17 120:20,22 128:22 133:14 135:5 23rd 12:7 179:18 23-26 4:22 24 120:22,23 128:20 185:17,21 241 150:4 25 36:24 42:1,3 186:8 26 130:25 131:7,8 179:18 266-7477
1	1:24 4:8 46:25 49:9,10 49:17,19,24 66:3,5 71:18 74:9 185:19,21 186:8 1st 193:14 1,113 141:8,16 10 187:15 100 112:13 102 53:25 108795 1:23 11 133:24 134:13 177:17 11th 182:11 12 54:18 146:7 177:17 12th 19:15 182:10 183:12 12/10/15 4:10 121 4:11 129 136:11 141:6 13 19:3,7 20:9,14 21:2 54:18 13th 2:5 3:5 130 143:18 1300 59:16,24		

3:16	97:25 129:20 159:4	608	9th
27	400,000	3:16	180:23
132:8	174:6	61	9:15
28	41	183:8	1:15
132:8,11,16	159:22 161:4	65	95
28-day	43	48:18	111:9 183:7
161:16	14:25 76:9	654-6200	
29	46	2:8 3:8	
132:11 133:23	161:14 162:15	69	
<hr/>		47	23:21
3		<hr/>	
3	49	7	
4:13 50:10,16,20 67:1	4:8	7	
67:16 135:22,24	498,244	4:24 173:10,14 174:2	
146:6 168:23	174:2	179:2,4 182:5	
3.1	<hr/>		70s
180:10	5	161:21	
30	5	700	
134:19 146:7	4:3,19 72:15 97:6,16	2:5 3:5	
30-some-odd	171:6,7,14 187:16	72	
38:22	5th	168:17	
30-year	8:20	77	
39:8 103:24	5,000	183:6	
34	79:4,5 81:9	7857	
147:22	50	3:14	
35	36:24 46:8 92:10 97:25	<hr/>	
149:8	112:13 142:7 143:8	8	
35,332	51	26:4 114:15 122:8,9	
157:21 158:21	97:25 98:21 104:13	131:25	
36	166:16	80	
150:2 180:8	53	173:24 174:16,18	
365	167:13	800	
150:2	53707	60:14	
38	3:15	800-some-odd	
152:19	56.1	13:25	
39	181:20	81	
154:6 157:2,5,19	563	14:19	
<hr/>		83	
4		183:9	
4	<hr/>		85
4:18 67:16 77:19 78:1	6	41:9 76:23	
91:24 92:25 96:2	4:21 108:12 110:4,21	85-plus	
131:25 168:11,13	111:3 112:11 179:1,4	77:6	
4th	179:9,16	<hr/>	
86:9	60.4	9	
4,000	180:4 181:8	9	
141:22	600	111:9,10 127:15	
40	2:6 3:6		